MORATORIUM ON THE ISSUANCE OF COMMERCIAL FISHING VESSEL AND GEAR LICENSE AND OTHER CLEARANCES

BFAR ADMINISTRATIVE CIRCULAR NO. 253-1, S. 2018, July 06, 2018

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WHEREAS, studies in 1987 showed that the biomass of commercially exploited demersal stocks had declined to about 30% of its original level in the 1940s while small pelagics had been biologically and economically overfished, with effort level in the mid-1980s being more than thrice the level necessary to harvest maximum sustainable yield;

WHEREAS, a study in 1997 concluded that the Philippines' commercial fishing effort based on horsepower is 45% more than the optimum level and that total fish catch had levelled-off at 1,650, 000 metric tons since the early 1990's;

WHEREAS, a study in 2004 indicated the occurrence of biological and economic overfishing of small pelagics, particularly in nearshore and traditional fishing grounds with assessments showing the need to decrease fishing pressure by about 50-65%;

WHEREAS, a study in 2008 of the National Fisheries Research and Development Institute showed heavy exploitation rate in nine of major bays and gulfs attributed to unabated fishing pressure and destructive fishing practices;

WHEREAS, based on the National Stock Assessment Program (NSAP) of the Department of Agriculture-National Fisheries Research and Development Institute (DA-NFRDI), exploitation levels of most if not all commercial pelagic species for the last five years have exceeded estimates of potential yield;

WHEREAS, based on the 2011 NSAP results, major biological parameters of monitored pelagic stocks at harvest showed signs of growth and recruitment overfishing;

WHEREAS, there is overwhelming evidence showing the need to decrease, if not maintain the current level of fishing effort;

WHEREAS, Article 192 of the United Nations Convention on the Law of the Sea, which was ratified by our country in 1984 and which entered into force in 1994, binds the Philippine government to protect and preserve the marine environment.

WHEREAS, Principle 15 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development, Article 6.5 of the Food and Agriculture Organization's Code of Conduct for Responsible Fisheries (CCRF) and other voluntary international fisheries legal instruments prescribe a precautionary approach in the utilization and management of living aquatic resources;

WHEREAS, Article 7.1.8 of the CCRF urges States to take measures to prevent or eliminate overfishing and

excess fishing capacity and to ensure that levels of fishing effort are commensurate with the sustainable use of fishery resources;

WHEREAS, Section 7 of Republic Act 8550, as amended by RA 10654, otherwise known as The Philippine Fisheries Code as amended, mandates the Department of Agriculture (DA) to issue such number of licenses and permits for the conduct of fishery activities subject to the limits of the Maximum Sustainable Yield of the resource as determined by scientific studies or best available evidence;

WHEREAS, Section 162 of RA 8850, as amended by RA 10654, empowers the DA to declare a moratorium on the issuance of licenses for commercial fishing vessels to operate in specified area or areas in Philippine waters in a limited period of time if there are indications of overfishing brought about by a decrease in the volume and sizes of fish caught therein or for conservation or ecological purposes;

WHEREAS, Section 128 of RA 8550, as amended RA 10654, authorizes the DA to issue regulations for the conservation, preservation, management and sustainable development of fishery and aquatic resources;

WHEREFORE, in view of these premises and as part of the precautionary approach to fisheries management, the following rules and regulations establishing a three-year moratorium on the issuance of new CFVGL are hereby promulgated;

SECTION 1. Definition of terms. - For purposes of this order, the following terms shall mean:

a. Commercial catcher fishing vessel - any boat, ship or other watercraft 3.1 gross tons and above, equipped to be used for taking of fishery species;
b. Decommissioning - the permanent withdrawal of a fishing vessel from operation within the fishing industry;
c. Fishing effort - the product of the capacity and the activity of the fishing vessel and refers to the sum of all fishing effort of the fishing vessels in a group operation;
d. Gear Classification - the grouping of fishing gears based on how it is utilized to capture or gather fish and to a lesser extent on the gear construction and following the International Standard Statistical Classification of Fishing Gear, which include: surrounding nets; seine nets; trawls; gill nets; scoop nets; liftnets; falling gear; traps; hook and line; drive-in nets; and dredges.
e. Moratorium - suspension in the issuance of new commercial fishing vessel and gear license and of clearances for the construction or importation of commercial fishing vessels

SECTION 2. Period and scope of application. - The moratorium shall be imposed for a period of three (3) years after six (6) months from the effectivity of this Circular. It shall apply to any commercial catcher fishing vessel utilizing all types of nets or gears whether active or passive. It shall cover the conversion of passenger or cargo vessels into fishing vessels. It shall also cover the issuance of construction clearance and importation of all types of commercial catcher fishing vessels. It shall apply to owners of unregistered and unlicensed commercial fishing vessels and gears who fail to avail of the grace period provided in Section 4 hereof. These owners are prohibited from transferring their vessel or gears by sale or otherwise to fishing companies, operators, partnerships or persons, particularly to those who were issued construction or import clearance.

SECTION 3. Exemptions. - (a) The moratorium shall not apply to the renewal of existing CFVGL, provided, that should there be an increase in the gross tonnage of the commercial fishing vessel subject of the application for renewal, the same should not exceed two hundred fifty (250) gross tons, provided further that the gear registration is for the same previously registered gear or new fishing gear belonging to the same gear classification.

(b) The moratorium shall not cover the issuance of construction or importation clearances and licenses for the replacement of sunken, destroyed or de- commissioned registered and licensed commercial fishing vessels

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provided that should there be an increase in gross tonnage of the replacement vessel, the same should not exceed 250 gross tons and the replacement is with prior approval of the Bureau of Fisheries and Aquatic Resources (BFAR) National Director, provided further that the proof that the fishing vessel has been decommissioned shall be submitted at the time of application for CFVGL.

(c) The moratorium shall not cover the issuance of distant water fishing license or international fishing permit under access agreement with other coastal states, subject to existing Regional Fisheries Management Organization (RFMO) rules;

(d) The moratorium shall not cover the issuance of construction or import clearances for support vessels, provided that the applicant shall execute and submit a notarized affidavit of undertaking that:

(i) He shall undertake to construct or import the fishing vessel within one year from the issuance of clearance;
(ii) He shall post a cash bond deposit in favor of the Bureau as a guaranty of good faith and for satisfactory compliance with the terms and conditions of the clearance, which shall be non-transferable and in accordance with the following rates:
a. For vessels of 3.1 to 10 GT - P2,500.00
b. For vessels 10.1 to 20 GT - P6,000.00
c. For vessels of 20.1 to 50 GT - P14,000.00
d. For vessels of 50.1 to 100 GT - P15,000.00
e. For vessels of 100.1 and above - P40,000.00

(iii) He shall voluntarily cause the forfeiture of the performance bond in favour of BFAR, for any violation of the terms and conditions of the clearance;
(iv) He shall secure the registration and CFVGL for the vessel. Upon the issuance of CFVGL, BFAR shall either return the cash bond or with the concurrence of the licensee, set-off the amount against the fees and charges required in the licensing of the vessel; and,
(v) He shall not convert the support vessel into a catcher vessel.

Section 4. Grace Period. - All owners of unregistered or unlicensed commercial fishing vessels with the exception of Danish Seiners or modified Danish Seiners, must secure the registration with the Maritime Industry Authority (MARINA) and fishing license and gear registration from BFAR within six (6) months from the effectivity of this Circular. Failure to do so shall result in the permanent denial of fishing access and inclusion in the list of vessels and persons involved in illegal, unreported and unregulated fishing (IUUF).

Section 5. Role of the MARINA, National Telecommunication Commission (NTC), Philippine Coast Guard (PCG), Philippine Fisheries Development Authority (PFDA), and Local Government Units (LGUs) - The BFAR shall seek the cooperation of MARINA, NTC, PFDA and PCG in the promulgation of their respective circulars in order to give effect to the moratorium and to ensure that no fishing capacity is added during the three-year period. The BFAR shall also coordinate with these agencies and the LGUs in the establishment and maintenance of an updated relational database of the Philippine fishing fleet comprising both municipal and commercial fishing vessels and in the review and revision of registration and licensing procedures in order to rationalize fishing effort, to prevent illegal, unregulated and unreported (IUU) fishing, and to maintain such number of fishing licenses corresponding to the carrying capacity of the resources and their habitats. A record of the Philippine fishing fleet shall be established by the second year of the moratorium.

Section 6. Prohibition. - It shall be unlawful for any natural or juridical person during the moratorium period:

(a) to utilize for fishing or to operate a commercial fishing vessel, which is unregistered, registered but unlicensed, unregistered and unlicensed, or whose license has expired and not renewed, or to utilize an

unregistered gear;
(b) to construct or import commercial fishing vessels except as provided in Section 3, or to instigate or allow the construction or importation of commercial fishing vessels;
(c) to transfer by sale or otherwise, an unregistered gear, an unregistered or unlicensed commercial fishing vessel, or a registered but unlicensed fishing vessel and to participate or be involved in, or to allow such transfers;
(d) to allow the departure to the fishing ground of unregistered, unlicensed, or registered but unlicensed commercial fishing vessels or the unloading of catches by such commercial fishing vessels in any ports, landing sites or private wharves in the Philippines;
(e) to fish in waters within and outside Philippine jurisdiction using a Philippine- flagged commercial fishing vessel that is not in the record of the Philippine fishing fleet;
(f) to fail to register or secure the license for a commercial fishing vessel
pursuant to Section 4;
(g) to violate any of the provisions of the affidavit of undertaking stated in
Section 3 (d);
(h) to convert a support vessel to a catcher vessel; and,
(i) to fail to comply with any of the provisions of this Circular.

Section 7. Penalties - A. Administrative Penalties. An offender shall, subject to administrative due process, be meted with the following sanctions:

(1) Inclusion in the IUU List of fishing vessels and persons involved in IUU
fishing;

(2) Suspension of the issuance of catch certificates, health certificates, registration or relevant BFAR approval or market accreditation.

(B) Judicial Penalties. Except for failure to construct or import a support fishing vessel, which shall be subject only to administrative penalties, an offender who commits any of the prohibited acts in Section 6, shall, upon conviction by the Court, be subjected to imprisonment for six (6) months and fine equivalent either to the value of catch if the commercial fishing vessel is caught in the act of fishing or ten thousand pesos (P10,000), whichever is higher, confiscation of catch and gear, provided that the BFAR Director, upon leave of Court, shall impound the gear and commercial fishing vessel while the case is pending investigation and trial, provided finally, that if the offender is a government employee, he shall be simultaneously subjected to the administrative proceedings.

Any persons who conspire to simulate transfers to undermine the moratorium shall be dealt with administratively and criminally.

Section 8. Separability Clause. - If any section or provision of this Circular is declared unconstitutional or invalid, the other sections or provisions which are not affected thereby shall continue to be in full force and effect.

Section 9. Repealing Clause. - All existing administrative orders, rules and regulations which are inconsistent with the provisions of this Order are hereby repealed.

Section 10. Effectivity. - This Order shall take effect fifteen (15) days after publication in a newspaper of general circulation and upon filing with the Office of the National Administrative Register.

ISSUED this 05 July 2018 in Quezon City, Metro Manila, Philippines.

(SGD) EMMANUEL F. PINOL
Secretary, Department of Agriculture

Recommending Approval:

(SGD) EDUARDO B. GONGONA
OIC, Undersecretary for Fisheries, DA
and Concurrent Director,
BFAR NFARMC Chairperson

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