

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF AGRICULTURE, THE BUREAU OF FISHERIES AND AQUATIC RESOURCES, AND THE NATIONAL TELECOMMUNICATIONS COMMISSION, PETITIO...

G.R. Nos. 256282, 256559, and 257049, January 21, 2026

Ponente: SINGH, J.

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SINGH, J.:

These are three consolidated Petitions assailing the rulings of Branch 170, Regional Trial Court, Malabon City (RTC), which issued a writ of preliminary injunction (WPI) to enjoin the implementation of Fisheries Administrative Order No. 266,[1] Series of 2020 (FAO No. 266), and eventually declared the same as unconstitutional.

The Petition for Certiorari (With Prayer for Issuance of Temporary Restraining Order [TRO] and/or Preliminary Injunction [WPI]),[2] docketed as G.R. No. 256282, filed under Rule 65 of the Rules of Court, assails the Order,[3] dated January 22, 2021, issued by public respondent Presiding Judge Zaldy B. Docena (Judge Docena) of the RTC in SCA20-002-MAL, a Petition[4] for Declaratory Relief with Application for TRO and/or WPI. The said Petition was instituted by the private respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., and RBL Fishing Corporation (collectively, Royale Fishing et al.), operators of commercial fishing vessels. The January 22, 2021 Order granted the application for injunction and directed the Department of Agriculture (DA), the Bureau of Fisheries and Aquatic Resources (BFAR), and the National Telecommunications Commission (NTC),[5] all representatives of the petitioner Republic of the Philippines (Republic), to refrain from implementing FAO No. 266.[6]

The Petition for Review (With Prayer for Issuance of TRO and/or WPI),[7] docketed as G.R. No. 256559, filed under Rule 45 of the Rules of Court, is an appeal from the Decision,[8] dated June 1, 2021, of the RTC, which granted the Petition for Declaratory Relief, declared FAO No. 266 unconstitutional, and made the WPI earlier issued permanent.[9]

The Petition for Review on Certiorari,[10] docketed as G.R. No. 257049, also filed under Rule 45 of the Rules of Court, challenges the Orders, dated May 25, 2021[11] and June 23, 2021,[12] of the RTC which, respectively, denied the Motion to Intervene[13] and the Motion for Reconsideration[14] filed by the petitioners Oceana Philippines International (Oceana), Pablo R. Rosales (Rosales), and Ronaldo P. Reyes (Reyes; collectively, Oceana et al.). The Petition in G.R. No. 257049 likewise assails the June 1, 2021 Decision of the RTC which declared FAO No. 266 unconstitutional.

Upon the Motions separately filed by Royale Fishing et al.[15] and Oceana' et al.,[16] the Court consolidated G.R. No. 256559 with G.R. No. 256282 on November 18, 2021,[17] and G.R. No. 257049 with G.R. No. 256282 on December 7, 2021.[18]

The Facts

On February 25, 1998, Republic Act No. 8550, otherwise known as The Philippine Fisheries Code of 1998, was enacted "to achieve food security as the overriding consideration in the utilization, management, development, conservation[,] and protection of fishery resources in order to provide the food needs of the population." [19]

On February 27, 2015, Republic Act No. 10654 [20] was passed to amend Republic Act No. 8550. Specifically, Republic Act No. 10654 was enacted to strengthen the prevention, deterrence, and elimination of illegal, unreported, and unregulated fishing (IUUF).

Section 14 of Republic Act No. 8550, as amended, directed the DA to establish a monitoring, control, and surveillance system in coordination with the local government units (LGUs) 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. Section 119 of the law required all municipal, commercial, and distant water fishing vessels to comply with the vessel monitoring measures (VMM) promulgated by the DA in coordination with the LGUs. VMM includes the Vessel Monitoring System (VMS), a system that tracks, monitors, and manages fishing vessels, and the Electronic Reporting System (ERS), which is used to record, report, process, store, and send fisheries data.

On October 5, 2018, the DA, through the BFAR, issued FAO No. 260, entitled "Rules and Regulations on the Implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Commercial Philippine Flagged Fishing Vessels Targeting Straddling and Highly Migratory Fish Stocks," pursuant to Sections 14 and 119 of Republic Act No. 8550, as amended. [21]

More than two years later, or on October 12, 2020, the DA, through the BFAR, issued FAO No. 266 to update FAO No. 260. Among the amendments made was the removal of the limitation of the application of the rules and regulations to vessels "Targeting Straddling and Highly Migratory Fish Stocks." Thus, the rules and regulations henceforth, were to apply to all commercial Philippine-flagged fishing vessels.

The Petition for Certiorari, docketed as G.R. No. 256282 (Royale Fishing et al.'s Injunction)

The issuance of FAO No. 266 prompted Royale Fishing et al. to file the Petition for Declaratory Relief with Application for TRO and/or WPI before the RTC. They argued that Sections 14 and 119 of Republic Act No. 8550, as amended, as implemented by FAO No. 266, violated their constitutional right to privacy and are against unlawful searches as they tend to disclose trade secrets. [22] They also averred that FAO No. 266 violated the equal protection clause and Republic Act No. 8550, as amended, itself, because it singled out commercial fishing vessels even though the amended law also referred to municipal and distant water fishing vessels. [23]

Moreover, Royale Fishing et al. asserted that the issuance of FAO No. 266 violated their right to due process, alleging that neither scientific study, as mandated by the implementing rules and regulations of Republic Act No. 8550, nor prior consultation with stakeholders were conducted before its issuance. [24] Lastly, they argued that the implementation of PAO No. 266 was premature because Section 86 of Republic Act No. 8550, as amended, which it seeks to implement, has yet to be given effect. Section 86 prohibits commercial fishing vessels from fishing in municipal waters; however, no municipal water has yet been delineated. [25]

Maintaining that they would be suffering irreparable injury, Royale Fishing et al. prayed for the issuance of an injunction to enjoin the DA and BFAR from implementing Sections 14 and 119 of Republic Act No. 8550, as amended, and FAO No. 266. [26] Being the entity authorized to issue the Marine Mobile Service Identities needed for the installation of the VMS, the NTC was likewise impleaded.

The Assailed Order of the RTC

On January 22, 2021, after the parties presented their respective witnesses, the RTC issued its Order granting Royale Fishing et al.'s application for injunction. The dispositive portion reads:

Finding the grounds and arguments upon which the prayer for injunction is based to be well taken and sufficiently justified by the evidence presented in support thereto, a Writ of Preliminary Injunction is hereby issued, enjoining all [petitioners] Department of Agriculture, Bureau of Fisheries and Aquatic Resources[,] and National Telecommunications Commissions, their agents or duly authorized representative[s] and any other entities or persons acting for and in their behalf to cease and desist from implementing Fisheries Administrative Order No. 266, [s]eries of 2020 (FAO [No.] 266) until the question of its constitutionality is finally resolved in the instant Petition.

[Royale Fishing et al.] are directed to post of [sic] a cash or surety bond in the amount of [PHP] [3.5 million] to answer for whatever damages which may be sustained by the [petitioners] by reason of this injunction or if the Court should finally decide that [Royale Fishing et al.] are not entitled thereto.

In the meantime, parties are hereby directed to submit their respective Memorandum [sic] in the main case within [15] days from receipt hereof.

SO ORDERED.[27]

The RTC was convinced that Royale Fishing et al.'s knowledge and mastery of the fishing grounds, including the date and time of their fishing activities, were considered sensitive information and formed part of their trade secrets. The installation of VMS and ERS in their fishing vessels would reveal their locations, and thus their trade secrets, 24/7. The RTC found that this arrangement would unnecessarily expose the trade secrets of Royale Fishing et al., considering that the entity managing the installation of VMS and ERS was SRT Marine, a private service provider from the United Kingdom, not to mention that the some of the VMS operators were purportedly contractual employees.[28]

Convinced that Royale Fishing et al. would suffer irreparable injury by the unnecessary exposure of their trade secrets, the RTC issued the WPI.[29]

Subsequently, the Republic, through the Office of the Solicitor General (OSG), filed a Manifestation,[30] notifying the RTC that it would be filing a Motion for Reconsideration of the January 22, 2021 Order and requesting that the proceedings be suspended pending the resolution of such motion. On February 4, 2021, the Republic filed the Motion for Reconsideration.[31]

In its Omnibus Order,[32] dated February 8, 2021, the RTC denied the Republic's prayer to suspend the proceedings and directed Royale Fishing et al. to file their comment or opposition to the Motion for Reconsideration. After receiving Royale Fishing et al.'s Opposition, the RTC issued an Order,[33] dated February 16, 2021, stating that the Motion for Reconsideration was submitted for resolution.

On March 24, 2021, the Republic filed a Manifestation and Motion,[34] praying for the lifting of the WPI. On April 15, 2021, it filed a Very Urgent Manifestation and Motion,[35] again seeking to lift the WPI. In addition, the Republic disclosed that the European Commission, on November 16, 2020, sent an official communication to the BFAR, stating that the failure to install VMS in Philippine commercial fishing vessels was being taken into account, affecting the country's trade of fishery products with the countries within the European Union.[36]

The Republic likewise stated that the Philippines was issued a yellow card by the European Union in 2014 for inadequately addressing IUUF. The sanction was lifted in 2015 after the enactment of Republic Act No. 10654, amending Republic Act No. 8550. The Republic averred that with the issuance of the WPI, the European Union

may yet again sanction the Philippines with another yellow card, or even with a higher penalty.[37]

Despite the said Motions filed by the Republic, the RTC proceeded with the trial of the case. The Republic treated this as a denial of its Motion for Reconsideration, and, on May 18, 2021, maintaining the urgency of the matter, filed the present Petition for Certiorari under Rule 65, docketed as G.R. No. 256282.[38]

On May 26, 2021, the RTC denied the Motion for Reconsideration for lack of merit.[39]

In the Petition, docketed as G.R. No. 256282, the Republic argued that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the WPI, arguing that FAO No. 266 is governed by the Rules of Procedure for Environmental Cases (RPEC),[40] which means that only the Supreme Court can issue a TRO and/or WPI against its implementation. It likewise averred that the RTC should have applied the precautionary principle considering the expertise of the BFAR.[41] The Republic also maintained that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in concluding that the data to be gathered by the VMS were trade secrets.[42]

The Petition for Review on Certiorari, docketed as G.R. No. 256559 (Royale Fishing et al.'s Declaratory Relief)

In the meantime, the RTC conducted the Pre-Trial Conference, and thereafter proceeded with the trial of the case.

Royale Fishing et al. adopted the testimonies of their witnesses during the hearing on the application for the issuance of a TRO/WPI and no longer presented additional witnesses. The Republic, on the other hand, presented additional witnesses.

The Assailed Decision of the RTC

On June 1, 2021, the RTC rendered the assailed Decision in G.R. No. 256559. The dispositive portion is as follows:

WHEREFORE, the instant petition is GRANTED. Fisheries Administrative Order No. 266[,] [s]eries of 2020 (FAO [No.] 266) is declared NULL and VOID for being UNCONSTITUTIONAL and thus ultra vires, illegal, void[,] and contrary to the provisions of [Republic Act No.] 8550, as amended. Consequently, all memoranda, orders[,] and other issuances to [petitioners'] regional offices and other government agencies issued pursuant to or in implementing FAO [No.] 266 are declared null and void.

The writ of preliminary injunction (dated January 22, 2021) previously issued by this Court prohibiting the [petitioners] from implementing or enforcing FAO [No.] 266 is hereby declared and made PERMANENT.

SO ORDERED.[43] (Emphasis in the original)

For essentially the same reasons that moved it to grant the application for WPI, the RTC declared FAO No. 266 as unconstitutional. As in its January 22, 2021 Order, it was convinced that FAO No. 266 was violative of the constitutional right to privacy, right against unreasonable searches, right to due process, the right to participate in decision-making processes, and the right to equal protection.[44]

Asserting that the issues are of transcendental importance, the Republic filed the Petition for Review on Certiorari, docketed as G.R. No. 256559, to assail the June 1, 2021 Decision.

The Republic argues that the RTC erred in finding that Royale Fishing et al.'s Petition for Declaratory Relief raised a justiciable controversy. It also submits that it erred in declaring FAO No. 266 unconstitutional, maintaining that FAO No. 266 violated no constitutional right.[45]

The Petition for Review on Certiorari, docketed as G.R. No. 257049 (Oceana et al.'s Intervention)

Before the issuance of the assailed Decision, on April 19, 2021, Oceana et al. filed a Motion to Intervene in the proceedings before the RTC. Oceana, a duly registered local branch of Oceana, Inc., is "a non-government advocacy organization that promotes sustainable fisheries and marine conservation, fosters national policies for the protection and sustainability of marine resources in the country, and works to restore the abundance of Philippine oceans." [46] Pursuant to Part II, Rule 2, Section 5 of the RPEC, invoking third party citizen standing on behalf of all Filipinos, including minors and generations yet unborn, Oceana moved that it be allowed to participate in the case before the RTC. [47]

Rosales and Reyes, on the other hand, invoked their standing as municipal fisherfolk. They maintained that they stood to benefit directly from the implementation of FAO No. 266 as the installation of VMS and ERS would prevent commercial fishing vessels from intruding into municipal waters. [48]

Royale Fishing et al. filed their Opposition to the Motion to Intervene, [49] submitting that Oceana et al. were not real parties-in-interest and that the intervention would cause further delay. Oceana et al. filed a Reply to the Opposition, [50] reiterating that their interest in the case warranted their intervention and that their intervention would prevent, rather than cause, delay.

The Assailed Orders of the RTC

On May 25, 2021, the RTC issued its Order denying the Motion to Intervene of Oceana et al. The dispositive portion reads:

WHEREFORE, premises considered, the Motion for Intervention is hereby, DENIED.

SO ORDERED. [51] (Emphasis in the original)

The RTC did not agree with Oceana et al. that they have sufficiently shown their legal interest in the subject matter of the litigation. It was also convinced that allowing Oceana et al. to intervene would cause further delay since it would open the proceedings to the many other non-government organizations who advocate for the conservation of marine resources, and other municipal fishermen in the country. [52]

Oceana et al. filed a Motion for Reconsideration [53] of the May 25, 2021 Order, which the RTC denied in the assailed Order, [54] dated June 23, 2021.

Thus, Oceana et al. filed the Petition for Review on Certiorari, docketed as G.R. No. 257049. Aside from the May 25, 2021 Order denying their Motion to Intervene, Oceana et al. also questioned the June 1, 2021 Decision of the RTC. [55]

Oceana et al. argued that the RTC erred in denying their Motion to Intervene. They maintained that they have direct, actual, and material interest over the outcome of the case, that their rights cannot be fully protected in a separate proceeding, and that their intervention will not cause undue delay. [56] They also asserted that the RTC erred in declaring FAO No. 266 unconstitutional and in making the WPI permanent, advancing that FAO No. 266, as well as Republic Act No. 8550, as amended, was a valid exercise of police power. They submitted that FAO No. 266 violated no right safeguarded by the Constitution. [57]

As previously stated, G.R. No. 256559 and G.R. No. 257049 were subsequently consolidated with G.R. No. 256282 (Royale Fishing et al.'s Injunction) on different dates.

The Comments filed by Royale Fishing et al.

Due to the overlapping of the three Petitions, Royale Fishing et al. filed several Comments.

In their Comment, [58] dated September 3, 2021, on the Petition for Certiorari, docketed as G.R. No. 256282

(Royale Fishing et al.'s Injunction), Royale Fishing et al. contended that the said Petition was premature because it was filed before the Motion for Reconsideration of the January 22, 2021 Order was resolved.[59] They likewise advanced that the Republic's direct resort to this Court violated the doctrine of hierarchy of courts.[60] Royale Fishing et al. also submitted that the Petition for Certiorari has already become moot and academic because a Decision has already been rendered and the WPI has already been made permanent.[61] They argued that, at any rate, the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.[62]

Moreover, Royale Fishing et al. contended that the Republic did not come to Court with clean hands, explaining that the representatives of the Republic continued to enforce FAO No. 266 despite the issuance of the WPI. They pointed out that the BFAR,[63] through then Director Eduardo Gongona, and the NTC,[64] through Deputy Commissioner Edgardo V. Cabarios, issued separate Memoranda to their Regional Directors, advising them that the WPI was applicable only within Malabon and Navotas.

On March 14, 2022, Royale Fishing et al. filed another Comment[65] to address the Petition for Review on Certiorari, docketed as G.R. No. 256559 (Royale Fishing et al.'s Declaratory Relief). They submitted that the said Petition was improper because it not only raised questions of fact, it also violated the doctrine of hierarchy of courts.[66] They likewise contended that the Petition for Declaratory Relief raised a justiciable controversy before the RTC[67] and maintained that FAO No. 266 was unconstitutional.[68]

Lastly, Royale Fishing et al. filed their Comment[69] on the Petition for Review on Certiorari, docketed as G.R. No. 257049 (Oceana et al.'s Intervention) on April 28, 2022, reiterating that Oceana et al. had no legal interest in the litigation.

On August 22, 2023, the Court set the consolidated Petitions for Oral Arguments. The Preliminary Conference was held on September 26, 2023, and the Oral Arguments were conducted on October 10, 2023 and November 21, 2023. Thereafter, the parties were directed to submit their Memoranda.

Royale Fishing et al. and Oceana et al. filed their respective Memoranda on December 21, 2023. On the other hand, the Republic filed a Motion for Extension of Time to File Memorandum praying that it be granted a period of 20 days from December 21, 2023, or until January 10, 2024 to do so. Royale Fishing filed an Opposition to the said Motion. The Republic filed its Memorandum[70] on January 10, 2024. On January 23, 2024, the Court granted the Republic's Motion and noted the parties' respective Memoranda, as well as the Opposition of Royale Fishing et al.

The Issues

The following issues were identified during the Preliminary Conference and were tackled during the Oral Arguments:

A.

Procedural Issues

1.

Whether declaratory relief is the proper remedy in assailing the constitutionality of FAO No. 266.

a.

Whether there is a need for Royale Fishing et al. to exhaust all available administrative remedies before filing a Petition for Declaratory Relief. If so, whether Royale Fishing et al. complied with this requirement.

2.

Whether Royale Fishing et al. possesses locus standi to question the constitutionality of Sections 14 and 119 of Republic Act No. 8550, as amended, and implemented by FAO No. 266.

3.

Whether the case presents issues of transcendental importance.

4.

Whether the RTC acted with grave abuse of discretion in issuing the Writ of Preliminary Injunction to enjoin the enforcement of FAO No. 266.

a.

Whether the Rules of Procedure for Environmental Cases or Republic Act No. 8550, as amended, will govern the issuance of writs of preliminary injunction in environmental cases;

b.

Whether the RTC correctly appreciated the elements for issuance of a writ of preliminary injunction; and

c.

Whether the Petition for Certiorari, docketed as G.R. No. 256282, has been rendered moot and academic by the June 1, 2021 Decision of the RTC.

5.

Whether the RTC erred in denying the Motion to Intervene filed by Oceana Philippines et al.

a.

Whether Oceana Philippines et al. availed of the proper remedy when they directly filed with the Court a Petition for Review on Certiorari under Rule 45 to assail the denial of their Motion to Intervene; and

b.

Whether a citizen's suit under the Rules of Procedure for Environmental Cases is applicable.

B.

Substantive Issues

1.

Whether the RTC erred in declaring that FAO No. 266 violated the constitutional rights to privacy and against unlawful searches of Royale Fishing et al.

a.

Whether Royale Fishing et al., in applying for a fishing vessel license, agreed to comply with existing and future fishery rules and regulations;

b.

Whether the State has a legitimate interest to prevent illegal, unreported, and unregulated fishing in Philippine waters;

c.

Whether fishing companies enjoy any reasonable expectation of privacy when operating in Philippine waters, and the extent thereof;

d.

Whether the information secured through the VMS, especially the real time location of fishing vessels during the conduct of fishing activities, constitutes trade secrets; and

e.

Whether fishing grounds constitute trade secrets under Philippine Law.

2.

Whether FAO No. 266 is a valid measure to safeguard the people's right to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

3.

Whether the RTC erred in declaring that FAO No. 266 violated the equal protection clause of the Constitution for regulating only commercial fishing vessels and leaving the regulation of municipal fishing vessels to the discretion of their respective LGUs.

4.

Whether FAO No. 266 exceeded the bounds provided in Section 14 of Republic Act No. 8550, as amended, as regards the monitoring, control, and surveillance of Philippine waters of the DA.

5.

Whether the RTC erred in declaring that the constitutional rights of Royale Fishing et al. to due process and to participate in the decision-making process were violated in the issuance of FAO No. 266.

6.

Whether FAO No. 266 can be implemented without the delineation of municipal waters.

7.

Whether the Philippines' utilization of VMS is mandated by the Directorate-General for Maritime Affairs and Fisheries of the European Commission.

8.

Whether the declaration of the RTC that FAO No. 266 is unconstitutional contravenes the State's obligations under pertinent international covenants, such as the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

In essence, the issues are:

First, is direct recourse to this Court by the Republic and Oceana et al. allowed under the Rules?

Second, did Royale Fishing et al. correctly avail of the Petition for Declaratory Relief in assailing the constitutionality of FAO No. 266?

Third, did the RTC commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing a WPI?

Fourth, did the RTC err in denying Oceana et al.'s Motion to Intervene?

And fifth, is FAO No. 266 unconstitutional?

The Ruling of the Court

The Court dismisses the Petition for Certiorari in G.R. No. 256282 (Royale Fishing et al.'s Injunction) for being moot and academic. The Petition for Review on Certiorari in G.R. No. 256559 (Royale Fishing et al.'s Declaratory Relief) is denied. FAO No. 266 is declared unconstitutional.

Lastly, the Court partly grants the Petition for Review on Certiorari in G.R. No. 257049 (Oceana et al.'s Intervention), finding the RTC to have erred in denying the Motion for Intervention.

The Republic's direct recourse to this Court is allowed under the exceptions to the doctrine of hierarchy of courts

The Republic submits that its direct recourse to this Court was proper both in G.R. No. 256282, filed under Rule 65, and G.R. No. 256559, filed under Rule 45, advancing that these Petitions fall under the exceptions to the doctrine of hierarchy of courts. The doctrine of hierarchy of courts was explained in *Gios-Samar, Inc. v. Department of Transportation and Communications*:^[71]

This so-called "policy" was reaffirmed two years later in *People v. Cuaresma*, which involved a petition for certiorari challenging the quashal by the City Fiscal of an Information for defamation on the ground of prescription. In dismissing the petition, this Court reminded litigants to refrain from directly filing petitions for extraordinary writs before the Court, unless there were special and important reasons therefor. We then introduced the concept of "hierarchy of courts," to wit:

[. . .] This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, mandamus, quo warranto, habeas corpus and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of Batas Pambansa Bilang 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy.

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land.

This doctrine of hierarchy of courts guides litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs. Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus, parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply is sufficient cause for the dismissal of the petition.^[72] (Emphasis in the original, citations omitted)

Nevertheless, the Court has consistently held that the doctrine of hierarchy of courts is subject to exceptions. *Gios-Samar* reiterated these exceptions enumerated in *Diocese of Bacolod v. Commission on Elections*:^[73]

(1)

when there are genuine issues of constitutionality that must be addressed at the most immediate time;

(2)

when the issues involved are of transcendental importance;

(3)

cases of first impression;

(4)

the constitutional issues raised are better decided by the Court;

(5)

exigency in certain situations;

(6)

the filed petition reviews the act of a constitutional organ;

(7)

when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]

(8)

the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." [74]

The Republic avers that the G.R. No. 256282 and G.R. No. 256559 Petitions present issues of transcendental importance and are of first impression. It adds that the issues raised require urgent resolution and are better resolved by the Court, considering that there are seven other Petitions pending before different Regional Trial Courts across the country that are invoking the June 1, 2021 Decision of the RTC. Lastly, the Republic posits that these Petitions present only questions of law. [75]

There is merit in the submissions of the Republic.

The Petitions, docketed as G.R. No. 256282 and G.R. No. 256559, revolve around the main issue of the constitutionality of FAO No. 266, clearly a purely legal question. The resolution of this issue calls for the balancing of the State's duty to ensure the sustainability and conservation of fishery resources, on the one hand, and the protection of the constitutional rights of Royale Fishing et al., on the other.

The Court agrees that this is a case of first impression since this is the first opportunity for the Court to rule on the constitutionality of FAO No. 266. In addition, the Court is called to address the apparent contradiction between

Rule 2, Section 10 of the RPEC and Section 134 of Republic Act No. 8550, as amended, both of which deal with the propriety of issuance of injunction in cases involving Republic Act No. 8550, as amended.

Considering the foregoing, the Court gives due course to the G.R. No. 256282 and G.R. No. 256559 Petitions. The propriety of Oceana et al.'s direct appeal to this Court via their Petition, docketed as G.R. No. 257049, shall be discussed below.

Royale Fishing et al. properly availed of the Petition for Declaratory Relief

Rule 63, Section 1 of the Rules of Court provides:

Section 1. Who may file petition. – Any person interested under a deed, will, contract[,] or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Jurisprudence lays down the following requisites for an action for declaratory relief:

(1) [T]he subject matter of the controversy must be a deed, will, contract[,] or other written instrument, statute, executive order[,] or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.[76] (Citations omitted)

The Republic argues that Royale Fishing et al. erroneously availed of the Petition for Declaratory Relief, contending that all the requisites, save for the first one, are absent in this case. It avers that Royale Fishing et al. neither alleged that FAO No. 266 was vague nor sought judicial construction of its provisions. It submits that there has already been a breach of the administrative order at the time of the filing of the Petition, that is, it was already being enforced and implemented, but Royale Fishing et al. refused to comply with its directive. The Republic also contends that there was no actual justiciable controversy or any issue that is ripe for judicial determination, asserting that the supposed violation of the constitutional rights of Royale Fishing et al. are either speculative or anticipatory.[77] Lastly, it insists that other adequate reliefs were available to Royale Fishing et al., i.e., reconsideration or review of FAO No. 266 through the BFAR, appeal to the Secretary of Justice, and further review by the Office of the President. It advances that the existence of these remedies not only negated the presence of the sixth requisite of Declaratory Relief, it likewise demonstrated that Royale Fishing et al. violated the doctrine of exhaustion of administrative remedies.[78]

The Court is not persuaded.

The existence of the first requisite of declaratory relief is undisputed: the subject matter of the Petition for Declaratory Relief was FAO No. 266, a government regulation which seeks to implement Sections 14 and 119 of Republic Act No. 8550, as amended by Republic Act No. 10654.

The second requisite is likewise present as Royale Fishing et al. directly questioned the validity of FAO No. 266. There is no merit in the submission of the Republic that Royale Fishing et al. did not allege vagueness or the need for judicial construction of the assailed issuance. As the RTC correctly observed, the purpose of Royale Fishing et al. in filing the Petition for Declaratory Relief was to interpret and construe whether FAO No. 266 was constitutional.[79]

As to the third and fourth requisites, the Court, in *Republic v. Pryce Corp., Inc.*, [80] clarified how these

requirements are satisfied in cases where a petition for declaratory relief is resorted to challenge the constitutionality of a statute:

A petition for declaratory relief is not exempt from the actual case or controversy requirement. Jurisprudence reveals a common ground in applying the actual case or controversy requirement—there must be sufficient facts to enable the Court to intelligently adjudicate the issues, such that the questions raised may be resolved without relying on speculations or hypothetical scenarios.

The determination of sufficient facts is more nuanced in petitions for declaratory relief. Applying the third and fourth requisites for a declaratory relief action, We must locate the fine point where there exists an actual case or controversy, yet there is no breach of the documents in question. On this note, former Chief Justice Moran opined that accomplished physical wrong need not be alleged in a petition for declaratory relief.

This is best explained in the case of *Republic v. Roque*, where a petition for declaratory relief was filed by private respondents to assail the constitutionality of [Republic Act No.] 9372, or the Human Security Act of 2007. We explained that a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. The term 'ripening seeds' means "not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full-blown battle that looms ahead." The concept describes "a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration."

Following the disquisition in *Roque*, in a petition for declaratory relief, there are "sufficient facts" when there is a showing of an imminent and inevitable litigation if the issue is not judicially settled. The same rule was declared in *CJH Development v. BIR* where We ruled that ripeness in declaratory relief cases means that litigation is inevitable or there is no adequate relief available in any other form or proceeding. To require more than this standard will already negate the requirement that declaratory relief cases should be filed before any breach.[81] (Emphasis supplied, citations omitted)

Further, in *Universal Robina Corp. v. Department of Trade and Industry*,[82] the Court held that declaratory relief as a remedy for a constitutional challenge will succeed when there is a clear and convincing contrariety of legal rights:[83]

There is also an actual case and controversy when there is a clear and convincing showing of a contrariety of legal rights. In *Belgica v. Ochoa*, this Court explained:

Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, "[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."

In *Calleja v. Executive Secretary*, this Court explained that a contrariety of legal rights is one:

[That] can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of prima facie grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.

In *Belgica*, this Court also explained that the actual-case requirement is closely related to the ripeness requirement:

Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action." "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions." [84] (Citations omitted)

Given the recent clarifications in *Pryce Corp., Inc. and Universal Robina Corp.*, the Court adopted Senior Associate Justice Marvic M.V.F. Leonen's (Senior Associate Justice Leonen) position during deliberations that the standard for invoking declaratory relief in constitutional challenges is the imminence and inevitability of litigation if the issue—in this case, the constitutionality of FAO No. 266—is not judicially settled. The third and fourth requisites are satisfied when there is a clear and convincing showing of contrariety of legal rights—that is an assertion of opposite claims between the parties which is susceptible of judicial resolution.

Here, there exists a clear and convincing showing of contrariety of legal rights that enables the Court to adjudicate the issues based on existing law and jurisprudence. On the one hand, the Republic, through its representatives, exercises its authority to regulate the fishing activities of Royale Fishing et al. by implementing FAO No. 266. On the other hand, Royale Fishing et al. assert that such enforcement violates several of their constitutional rights.

At any rate, contrary to the submission of the Republic, the Court is not convinced that there has already been a breach that precludes the remedy of a declaratory relief.

Citing *Aquino v. Municipality of Malay, Aklan*, [85] the Republic asserts that the enforcement and implementation of the questioned Order rendered a petition for declaratory relief unavailable:

In the case at bar, the petition for declaratory relief became unavailable by [Executive Order No.] 10's enforcement and implementation. The closure and demolition of the hotel rendered futile any possible guidelines that may be issued by the trial court for carrying out the directives in the challenged [Executive Order No.] 10. Indubitably, the CA erred when it ruled that declaratory relief is the proper remedy given such a situation. [86] (Emphasis in the original)

The Republic is mistaken. The import of "enforcement and implementation" in *Aquino* must be understood in its context, i.e., the property which the petitioner therein sought to protect was already being demolished in accordance with the assailed executive order. Hence, the construction of such order through a declaratory relief was no longer available. That which was sought to be protected had already been injured.

Not so in the present case. Although FAO No. 266 was already being implemented and enforced at the time Royale Fishing et al. filed the Petition for Declaratory Relief, the affected parties immediately sought the guidance of the courts regarding the validity of the said administrative order. Royale Fishing et al. promptly questioned the validity of FAO No. 266. In less than two months after the said Order was issued on October 12, 2020, Royale Fishing et al., on December 1, 2020, filed the Petition for Declaratory Relief with Application for TRO and/or WPI. [87] On January 22, 2021, the RTC issued the WPI.

The ripeness requirement, the fifth requisite, is also present considering that, as the Republic states, FAO No. 266 was already being enforced and implemented, and the refusal of Royale Fishing et al. to comply would risk the non-renewal of their license to conduct fishing activities.

Lastly, the sixth requisite, i.e., adequate relief is not available through other means or other forms of action or proceeding, is present in this case. The Republic is mistaken in its assertion that administrative remedies were

available, and Royale Fishing et al. should have exhausted them first before seeking judicial intervention.

The ruling of the Court in *Smart Communications, Inc. v. National Telecommunications Commission*,^[88] which was recently reiterated in *Alliance of Non-Life Insurance Workers of the Philippines v. Mendoza*,^[89] enlightens:

In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. In *Association of Philippine Coconut Desiccators v. Philippine Coconut Authority*, it was held:

The rule of requiring exhaustion of administrative remedies before a party may seek judicial review, so strenuously urged by the Solicitor General on behalf of respondent, has obviously no application here. The resolution in question was issued by the PCA in the exercise of its rule-making or legislative power. However, only judicial review of decisions of administrative agencies made in the exercise of their quasi-judicial function is subject to the exhaustion doctrine.^[90] (Emphasis supplied, citation omitted)

FAO No. 266 was clearly issued by BFAR in the exercise of its rule-making or legislative power, not quasi-judicial function. Thus, the rule on exhaustion of administrative remedies need not be observed by Royale Fishing et al. before filing the Petition for Declaratory Relief.

Likewise, there is no merit to the Republic's contention that Royale Fishing et al. should have complied first with Section 138(c) of Republic Act No. 8550, as amended:

SECTION. 138. Citizen's Suits. – For the purposes of enforcing the provisions of this Code and its implementing rules and regulations, any citizen may file an appropriate civil, criminal[,] or administrative action in the proper courts/bodies against:

....

(c) Any public officer who willfully or grossly neglects the performance of a duty specifically enjoined by this Code and its implementing rules and regulations; or abuses authority in the performance of duty; or, in any manner improperly performs duties under this Code and its implementing rules and regulations: Provided, however, That no suit can be filed until after [15] days notice has been given the public officer and the alleged offender and no appropriate action has been taken thereon.

Clearly, this provision applies only when the case involves willful or gross neglect, abuse of authority, or any other improper conduct by a public officer in the performance of his or her duty under the law. This is patent from the last clause of paragraph (c) as it gives such public officer time to take the appropriate action.

In the present case, the issue is the validity of FAO No. 266, and it involves none of the instances under Section 138 of Republic Act No. 8550, as amended.

The explanation of the Court in *Aquino*, recently reiterated in *Pryce Corp., Inc.*, is worth stressing:

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.^[91] (Emphasis supplied)

Here, the issue of Royale Fishing et al. against FAO No. 266 has not yet reached a state where another relief is available. Unmistakably, the Petition for Declaratory Relief was the appropriate remedy before the impasse lead "to a repudiation of obligations, an invasion of rights, and a commission of wrongs."

Royale Fishing et al. possess locus standi to question the constitutionality of FAO No. 266

The Court further finds that Royale Fishing et al. possess locus standi to file the Petition for Declaratory Relief.

In *Falcis III v. Civil Registrar General*,^[92] the Court explained:

Legal standing is a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement." Interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest."

Much like the requirement of an actual case or controversy, legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by courts:

Legal standing or locus standi is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."^[93] (Citations omitted)

Universal Robina Corp. further elaborated:

Jurisprudence explains that legal standing "sharpens the presentation of issues." Thus, as a rule, a party will be allowed to raise a constitutional question only when "(1) he can show that he had personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action."^[94] (Citation omitted)

Here, Royale Fishing et al. has sufficiently shown that their constitutional rights and claimed trade secrets related to fishing activities could be jeopardized by the implementation and enforcement of FAO No. 266. A favorable action on their Petition for Declaratory Relief would prevent such injury.

Clearly, Royale Fishing et al. have established their legal standing to question the validity of FAO No. 266.

The Petition for Certiorari, docketed as G.R. No. 256282, has become moot and academic

At the outset, it must be stated that Royale Fishing et al.'s action for Injunction, i.e., the Petition for Certiorari, docketed as G.R. No. 256282, has already been rendered moot and academic by the June 1, 2021 Decision of the RTC.

The ruling in *La Vista Association, Inc. v. Court of Appeals*,^[95] as cited in *Kho v. Court of Appeals*,^[96] illumines:

We cannot likewise overlook the decision of the trial court in the case for final injunction and damages. The dispositive portion of said decision held that the petitioner does not have trademark rights on the name and container of the beauty cream product. The said decision on the merits of the trial court rendered the issuance of the writ of a preliminary injunction moot and academic notwithstanding the fact that the same has been appealed in the Court of Appeals. This is supported by our ruling in *La Vista Association, Inc. v. Court of Appeals*, to wit:

Considering that preliminary injunction is a provisional remedy which may be granted at any time after the commencement of the action and before judgment when it is established that the plaintiff is entitled to the relief demanded and only when his complaint shows facts entitling such reliefs ...and it appearing that the trial court had already granted the issuance of a final injunction in favor of petitioner in its decision rendered after trial on the merits ...the Court resolved to Dismiss the instant petition having been rendered moot and academic. An injunction issued by the trial court after it has already made a clear pronouncement as to the plaintiffs right thereto, that is, after the same issue has been decided on the merits, the trial court having appreciated the evidence presented, is proper, notwithstanding the fact that the decision rendered is not yet final Being an ancillary remedy, the proceedings for preliminary injunction cannot stand separately or proceed independently of the decision rendered on the merit of the main case for injunction. The merit of the main case having been already determined in favor of the applicant, the preliminary determination of its non-existence ceases to have any force and effect.[97] (Emphasis supplied, citations omitted)

In the recent case of *Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas*,[98] the Court reiterated that the disposition of the case renders the issue on the propriety of a TRO and/or WPI moot and academic:

TROs and WPIs "constitute temporary measures availed of during the pendency of the action" and are "preservative remedies for the protection of substantive rights" of the parties. They are ancillary because "they are mere incidents in and are dependent upon the result of the main action." Ancillary writs are not causes of action in themselves; they are mere adjuncts to the main suit with the sole object of preserving the status quo until the merits of the case can be heard. Being ancillary in nature, the existence of a main action or proceeding is a condition sine qua non before a WPI or TRO may lie:

In our jurisdiction, writs of preliminary injunction and TROs are considered as provisional injunctive reliefs that are only permitted to be issued in connection with—or as an ancillary to—a main action or proceeding pending in court. It is settled that the office of a writ of preliminary injunction is limited only to the preservation of the status quo until an action or proceeding could be fully decided; whereas a TRO is merely the maintenance of such status until an application for a writ of preliminary injunction can be heard. Evidently, the existence of a main action or proceeding is a condition sine qua non before a writ of preliminary injunction or TRO may lie.

The ancillary character of the writs of preliminary injunction and TROs also finds black letter support in our rules of procedure. Sections 1, 2 and 5, Rule 58 of the Rules of Court—which define and describe the precise circumstances under which a writ of preliminary injunction and TRO may be granted—all assume the prior existence of a main action or proceeding before such writ and order may be granted[.]

Thus, any preliminary writ cannot survive the resolution of the main case of which it is an incident because an ancillary writ "loses its force and effect after the decision in the main petition." When a main action is dismissed, any provisional remedy in this case is dissolved. It then follows that once a decision disposing of the main case becomes final and executory, any disposition by a court on the propriety of a TRO and WPI issued in the case serves no practical purpose and renders such a disposition moot and academic.

"An issue becomes moot when it ceases to present a justifiable controversy so that a determination thereof would be without practical value. In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition." "It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."

Hence, this Court, in *City of Manila v. Grecia-Cuerdo*, dismissed a Rule 65 petition involving only the propriety

of the issuance of a WPI in view of the trial court's final and executory Decision disposing of the main case. This Court ruled therein that the WPI was merely an incident in the main case and has thus been rendered moot and academic in view of the disposition of the main action.[99] (Emphasis supplied, citations omitted)

Here, the June 1, 2021 Decision of the RTC ruled on the merits of the Petition for Declaratory Relief and made the preliminary injunction subject of the G.R. No. 256282 Petition permanent. Hence, the issue as to the propriety of the WPI issued by the RTC has already become moot and academic. Both the Republic and Royale Fishing et al., by their citation of Kho, are agreed on this matter.

The Republic, nevertheless, prays that the Court rule on the issue of whether a court, other than this Court, may issue an injunction in cases governed by the RPEC. It submits that this issue falls under the third exceptional circumstance when the Court can resolve an issue even if it has already become moot and academic:[100]

This Court has taken cognizance of moot and academic cases when:

(1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[101] (Emphasis supplied)

The Court finds value in the submission of the Republic. Here, there appears to be a contradiction between the cited rules.

Rule 2, Section 10 of the RPEC provides:

SECTION 10. Prohibition against temporary restraining order (TRO) and preliminary injunction.—Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.

On the other hand, Section 134 of Republic Act No. 8550, as amended by Republic Act No. 10654, states:

SECTION 134. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, and Preliminary Mandatory Injunctions. – No injunction or restraining order from the Municipal Trial Courts and Regional Trial Courts shall lie against the Department and BFAR upon the ex parte motion or petition filed by any person or entity in the exercise by the Department and BFAR of its regulatory functions in support of the implementation of this Code.

Significantly, Rule 134.1 of the Internal Rules and Regulations (IRR) of Republic Act No. 8550, as amended, reiterates the provision of the RPEC:

Rule 134.1. Prohibition of Issuance of TRO, Preliminary Injunction, and Preliminary Mandatory Injunction. – Except the Supreme Court, no court can issue a TRO or a writ of preliminary injunction against lawful actions of government agencies that enforce the Fisheries Code or prevent the violations thereof.

In its Petition in G.R. No. 256282, the Republic argues that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction for issuing a WPI in violation of Rule 2, Section 10 of RPEC.[102] In their Comment, Royale Fishing et al. assert that there was no grave abuse of discretion because Section 134 of Republic Act No. 8550, as amended, empowered the RTC to issue an injunction as long the same was not ex parte.

The resolution of these assertions hinges on which between Rule 2, Section 10 of the RPEC or Section 134 of Republic Act No. 8550, as amended, applies in this case.

During the deliberations, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) opined that the RPEC

does not apply in the present case because it does not involve the enforcement or violations of environmental and other related laws, rules, and regulations. According to Justice Caguioa, it is Section 134 that should be applied. Associate Justice Henri Jean Paul B. Inting (Justice Inting) agreed with Justice Caguioa as to the non-applicability of the RPEC, but further averred that Section 134 does not likewise apply in this case. Justice Inting submitted that the rule applicable to the injunction sought by Royale Fishing et al. is Rule 58 of the Rules of Court on Preliminary Injunction. Justice Inting's position is partly correct because Rule 58 does provide the general rule for an application for a writ of preliminary injunction. However, both Rule 2, Section 10 of the RPEC and Section 134 of Republic Act No. 8550, as amended, provide specific rules in relation to the issuance of injunctions in particular cases. These specific provisions will therefore prevail over the general provisions in Rule 58. It is a fundamental legal principle that when two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.[103]

As previously stated, the issue on propriety of the issuance of the WPI has already become moot and academic. The Court shall, nevertheless, endeavor to harmonize Rule 2, Section 10 of the RPEC and Section 134 of Republic Act No. 8550, as amended. This is especially warranted considering that, as Justice Inting noted during the deliberations, the Court already approved and adopted Section 134 through OCA Circular No. 87-2016,[104] dated April 4, 2016. As astutely pointed out by Justice Inting, considering the approval of Section 134, "the lower courts must abide by the statutory proscription against the grant of preliminary injunctive writs, 'not because Congress decreed so, but because the Court, pursuant to its rule-making authority, adopted the prohibition.'"[105] But the Court, when possible, will harmonize rather than render any legal provision or rule without effect. It has been consistently held:

Interpreting and harmonizing laws with laws is the best method of interpretation. Interpretare et concordare leges legibus est optimus interpretandi modus. This manner of construction would provide a complete, consistent and intelligible system to secure the rights of all persons affected by different legislative and quasi-legislative acts. Where two (2) rules on the same subject, or on related subjects, are apparently in conflict with each other, they are to be reconciled by construction, so far as may be, on any fair and reasonable hypothesis. Validity and legal effect should therefore be given to both, if this can be done without destroying the evident intent and meaning of the later act. Every statute should receive such a construction as will harmonize it with the pre-existing body of laws.[106] (Emphasis supplied)

In construing Rule 2, Section 10 of the RPEC or Section 134 of Republic Act No. 8550, as amended, the ruling of the Court in *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*[107] provides guidance:

Rule 65 likewise requires that there be "no appeal or any . . . plain, speedy, [or] adequate remedy in the ordinary course of law." Section 3 of Republic Act No. 8975 provides for such a remedy when it gave an exception to the general rule prohibiting lower courts from issuing provisional injunctive relief against national government projects:

Section 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions[,] and Preliminary Mandatory Injunctions. — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit[,] or compel the following acts:

[. . .]

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable

injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

When the matter is of "extreme urgency involving a constitutional issue," even Regional Trial Courts may grant injunctive reliefs as explained in *Republic v. Nolasco*:

Republic Act No. 8975 definitively enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials[,] or any person or entity to restrain, prohibit[,] or compel the bidding or awarding of a contract or project of the national government, precisely the situation that obtains in this case with respect to the Agno River Project. The only exception would be if the matter is of extreme urgency involving a constitutional issue, such that unless the temporary restraining order is issued, grave injustice and irreparable injury will arise.

Considering that petitioner alleges that this matter is "of extreme urgency, involving as it does the . . . constitutional right[s] to due process and equal protection of the law," it should have prayed for injunctive relief before the trial court where its Petition for Certiorari via Rule 65 was pending, together with a bond fixed by the court.

Mere allegation or invocation that constitutionally protected rights were violated will not automatically result in the issuance of injunctive relief. The plaintiff or the petitioner should discharge the burden to show a clear and compelling breach of a constitutional provision. Violations of constitutional provisions are easily alleged, but trial courts should scrutinize diligently and deliberately the evidence showing the existence of facts that should support the conclusion that a constitutional provision is clearly and convincingly breached. In case of doubt, no injunctive relief should issue. In the proper cases, the aggrieved party may then avail itself of special civil actions and elevate the matter.[108] (Emphasis supplied, citations omitted)

From this ruling, the following principles may be derived: First, although the promulgation of rules concerning pleading, practice, and procedure is a judicial power, the Court, nevertheless, recognizes the power of Congress to enact a law that limits the issuance of provisional injunctive reliefs in certain types of cases or situations that impact public interest. Second, the Court acknowledges that the rule that only the Supreme Court may issue TROs, writs of preliminary injunction or preliminary mandatory injunction is not absolute and may be subject to exceptions. In the case of Republic Act No. 8975,[109] the exception is found in the same provision of the law.

Notably, in *Spouses Soller v. Singson*,[110] the Court declared that laws proscribing courts, except this Court, from issuing TROs and writs of preliminary injunction encroach on judicial power. Nevertheless, the Court did not hold these laws unconstitutional. It only ruled that such laws must be strictly construed:

In the case of *Philco Aero, Inc. v. Secretary Tugade*, this Court recognized the remedy of resorting directly before this Court in cases covered under [Republic Act] No. 8975. Section 3 of [Republic Act] No. 8975 was explicit in excluding other courts in the issuance of injunctive writs. However, in the case of *Bases Conversion and Development Authority v. Uy*, this Court clarified that the prohibition applies only to TRO and preliminary injunction, viz.:

A perusal of these aforequoted provisions readily reveals that all courts, except this Court, are proscribed from issuing TROs and writs of preliminary injunction against the implementation or execution of specified government projects. Thus, the ambit of the prohibition covers only temporary or preliminary restraining orders or writs but NOT decisions on the merits granting permanent injunctions. Considering that these laws trench on judicial power, they should be strictly construed. Therefore, while courts below this Court are prohibited by these laws from issuing temporary or preliminary restraining orders pending the adjudication of

the case, said statutes however do not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits.[111] (Emphasis in the original, citations omitted)

Guided by the foregoing rulings in *Dynamic Builders and Spouses Soller*, the Court now proceeds to reconcile (i) Rule 2, Section 10 of the RPEC, and (ii) Section 134 of Republic Act No. 8550, as amended.

To clarify, the Court notes that the constitutionality of Section 134 of Republic Act No. 8550, as amended, was never raised as an issue before the RTC and this Court. The Republic's argument was just that it was inapplicable in this case because the issuance of any temporary injunctive relief against the DA and the BFAR should be governed by Rule 2, Section 10 of the RPEC, given that Republic Act No. 8550 was expressly stated as within its scope under Rule 1, Section 2.[112]

The Court, however, cannot uphold such reasoning as it would essentially render Section 134 ineffective without expressly declaring it unconstitutional. "It is a basic axiom of constitutional law that all presumptions are indulged in favor of constitutionality and a liberal interpretation of the Constitution in favor of the constitutionality of legislation should be adopted." [113]

In *Civil Service Commission v. Department of Budget and Management*[114] and *Paras v. Commission on Elections*, [115] the Court reiterated its ruling in *Asturias Sugar Central, Inc. v. Commissioner of Customs*[116] that an interpretation making a law ineffective must be avoided:

A construction of a Statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, 'ut res magis valeat quam pereat,' that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided, under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.[117] (Emphasis supplied, citation omitted)

Thus, it cannot simply be concluded that Rule 2, Section 10 of the RPEC, prevails over Section 134 of Republic Act No. 8550, as amended, in all instances that involve the issuance of injunction or restraining order as doing so would effectively render the latter provision insignificant, meaningless, inoperative or nugatory.

In light of the foregoing, the Court must harmonize the two seemingly contradicting provisions:

Necessarily then, an attempt must be made to harmonize the two laws. In *Valera [v.] Tuason*, this Court stated:

One of the well-established rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or of two laws so that each shall be effective. In order that one law may operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable [sic] with the latter act. (*U.S. vs. Palacios*, 33 Phil., 208). Merely because a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one. (*Statutory Construction*, Crawford, p. 634).

In *Gordon [v.] Veridiano*, this Court, speaking through Mr. Justice Isagani A. Cruz, emphasized the task of courts to reconcile and harmonize laws:

Courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile the same instead of declaring outright the invalidity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government.[118] (Citations omitted)

In reconciling these two provisions, the necessary conclusion is that Section 134 of Republic Act No. 8550, as amended, may be construed as an exception to Rule 2, Section 10 of the RPEC. Thus, the general rule is that only this Court can issue a TRO or writ or preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof. By way of exception, Municipal Trial Courts and Regional Trial Courts may issue a TRO, preliminary injunction and preliminary mandatory injunction against the DA and BFAR in cases involving Republic Act No. 8550, as amended, provided that the following conditions are met: (i) the injunction shall lie only against the regulatory functions of the DA and BFAR; and (ii) it cannot be issued ex parte. An ex parte proceeding merely means that it is taken or granted at the instance and for the benefit of one party, and without notice to or contest from any party adversely affected.[119] Thus, before an injunction may be issued under Section 134 of Republic Act No. 8550, as amended, it must be with notice to or contest by the DA and the BFAR.

The Court need not belabor if the issuance of a WPI was proper in this case. As previously discussed, such was already mooted by the June 1, 2021 Decision of the RTC. Evaluating the correctness of the issuance of the WPI would no longer serve any practical purpose. The Court needed only to reconcile the seemingly contradictory provisions of Rule 2, Section 10 of the RPEC and Section 134 of Republic Act No. 8550, as amended, to guide the Bench, the Bar, and the public considering the issuance of OCA Circular No. 87-2016.

As for the permanent injunction, the matter will be discussed below.

The RTC erred in denying Oceana et al.'s Motion to Intervene in G.R. No. 257049; the ruling of the Court on Oceana et al.'s Petition is limited to the propriety of the denial of their Motion

At the outset, it must be stated that the May 24, 2021 Order of the RTC, which denied Oceana et al.'s Motion to Intervene, is an interlocutory order as it did not dispose of the Petition for Declaratory Relief nor ruled on its merits. Being an interlocutory order, it is not appealable. *Dela Cruz v. Wellex Group, Inc.*[120] illumines:

To emphasize, the 2018 RTC Order denying the petitioners' Manifestation and Motion for Clarification was an interlocutory order. An interlocutory order has been defined as one that "does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. " It refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy. . . . Clearly, the 2018 RTC Order was merely interlocutory as it did not terminate or finally dispose of the case.

As such, appeal was not the proper remedy to assail the 2018 RTC Order. Unlike a final judgment or order, which is appealable, an interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case. In line with this, [Rule 41, Section 1 (a)] of the Rules of Court specifically states that no appeal may be taken from an interlocutory order. This rule is only subject to a narrow exception. A party may question an interlocutory order without awaiting judgment after trial if its issuance is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In this case, the party can file a special civil action for certiorari under Rule 65 of the Rules of Court.[121] (Emphasis supplied, citations omitted)

Clearly, a Petition for Certiorari under Rule 65, not a Petition for Review on Certiorari under Rule 45, was the appropriate remedy to question the Order denying Oceana et al.'s Motion to Intervene. Pursuant to the doctrine of

hierarchy of courts, such petition should have been filed with the Court of Appeals.

However, there is a peculiar instance in this case that the Court cannot ignore. When their Motion to Intervene was denied, Oceana et al. filed a Motion for Reconsideration, which was subsequently denied by the RTC in its Order, dated June 23, 2021. By this time, the RTC had already rendered the June 1, 2021 Decision and decided with finality on the merits of the Petition for Declaratory Relief.

The ruling of the Court in *Foster-Gallego v. Spouses Galang*[122] enlightens:

True, this Court has on occasion held that an order denying a motion for intervention is appealable. Where the lower court's denial of a motion for intervention amounts to a final order, an appeal is the proper remedy, as when the denial leaves the intervenor without farther remedy or resort to judicial relief.

....

A prospective intervenor's right to appeal applies only to the denial of his intervention. Not being a party to the case, a person whose intervention the court denied has no standing to question the decision of the court. Petitioner thus had no legal personality to join Gallego in assailing the decision of the trial court. Petitioner could question only the trial court's orders denying his intervention and striking off from the records his answer-in-intervention, not the decision itself.[123] (Emphasis supplied, citations omitted)

Thus, although the May 25, 2021 Order of the RTC was an interlocutory order, the merits of the case had nevertheless been adjudicated by the same court in its June 1, 2021 Decision. In fact, by June 25, 2021, or merely two days after the denial of Oceana et al.'s Motion for Reconsideration, the Republic had already filed its Petition for Review on Certiorari with this Court to assail the June 1, 2021 Decision of the RTC.

Had Oceana et al. assailed the denial of their Motion to Intervene through a Rule 65 Petition with the Court of Appeals, and assuming they were able to secure a favorable decision from the appellate court, there is no more case before the RTC that they could intervene in. The case was already before this Court via a Petition for Review on Certiorari under Rule 45.

Following the ruling in *Gallego*, the Court can, thus, give due course to Oceana et al.'s appeal via Petition for Review on Certiorari. The ruling will, however, be limited to the question of whether the RTC correctly denied Oceana et al.'s Motion to Intervene, pursuant to the categorical pronouncement in *Gallego* that the intervenor, as a petitioner in an appeal, can question only the order denying the intervention, not the decision itself. The Court cannot, thus, rule on the issues raised by Oceana et al. regarding the June 1, 2021 Decision.

This is only proper considering that Oceana et al. never became a party to the Petition for Declaratory Relief. They conceded as much during the Oral Arguments on October 10, 2023:

ASSOCIATE JUSTICE [MARIA FILOMENA D.] SINGH:

...

[Atty. Michael Christopher D. De Castro (Atty. De Castro)], you filed a Motion to Intervene before the RTC?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

And of course, the main action is the Declaratory Relief action?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

And the Motion to Intervene was an incident?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

So, the denial of your Motion to Intervene, upon the denial of your Motion to Intervene, you filed a Motion for Reconsideration, it was also denied?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

And then you brought up the denial to the Court, straight?

ATTY. DE CASTRO:

Yes, Your Honor, before this Honorable Court, yes.

ASSOCIATE JUSTICE SINGH:

Yes. Via?

ATTY. DE CASTRO:

Via Rule 45, Your Honor.

ASSOCIATE JUSTICE SINGH:

Okay. And Rule 45 under the Rules of Court can be brought by whom?

ATTY. DE CASTRO:

Your Honor, if I may also make a... ?

ASSOCIATE JUSTICE SINGH:

No. Please answer my question.

ATTY. DE CASTRO:

Before, by the parties themselves, Your Honor.

ASSOCIATE JUSTICE SINGH:

A party. By a party?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

By a party to the?

ATTY. DE CASTRO:

To the case, Your Honor.

ASSOCIATE JUSTICE SINGH:

To the case?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

Is Oceana a party to the case before the RTC?

ATTY. DE CASTRO:

If I may make a...

ASSOCIATE JUSTICE SINGH:

No. Please answer my question.

ATTY. DE CASTRO:

Not yet, Your Honor.

ASSOCIATE JUSTICE SINGH:

Not yet. Because its Motion to Intervene was denied?

ATTY. DE CASTRO:

Yes, Your Honor.

ASSOCIATE JUSTICE SINGH:

Yes. And yet you filed a Rule 45 before us?

ATTY. DE CASTRO:

Yes, Your Honor. If I may...

ASSOCIATE JUSTICE SINGH:

You wanted to go straight to the Court?

ATTY. DE CASTRO:

If I may point to the appropriate case, Your Honor?

ASSOCIATE JUSTICE SINGH:

Do not, ah, you do not have to, you can cite that in your memorandum.

ATTY. DE CASTRO:

Yes, Your Honor.[124]

Considering the foregoing, the ruling of the Court as regards the Petition of Oceana et al. shall be limited only to the propriety of the denial of their Motion to Intervene.

In denying Oceana et al.'s Motion to Intervene, the RTC ruled:

An important consideration in resolving a motion to intervene is to determine whether the moving party has sufficiently shown his legal interest in the matter of litigation. Looking at the issues involved in the petition, the movant-intervenors cannot be considered real parties with legal interests in the subject matter of the litigation. The petition involves the constitutionality of an administrative order issued and implemented by the agencies of the government. If there is a party who can best defend its position on the matter, it is the government agency involved in the issuance of the said order. The interest referred to by the movant-intervenors is far from the legal interest referred to by the rules and jurisprudence.[125]

Oceana et al. anchor their intervention on the RPEC, on their claim of violation, of their right to a balanced and healthful ecology, and their representation of third parties. However, the Court finds that the RPEC is not applicable in this case because it covers only actions that involve enforcement or violations of environmental and other related laws, rules and regulations. Rule 1, Section 2 of the RPEC provides:

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[.] (Emphasis supplied)

In this case, the subject matter does not concern the enforcement of or violations against environmental laws, rules, or regulations. Instead, the issues revolve around the constitutionality of FAO No. 266. It is focused not on environmental protection, but on safeguarding the constitutional and proprietary rights of Royale Fishing et al.

Clearly, therefore, on this ground, Oceana et al.'s Motion to Intervene was correctly denied.

Nevertheless, Oceana et al.'s Motion to Intervene should still have been granted under Rule 19, Section 1[126] of the Rules of Court. *Sula v. Commission on Elections*[127] reiterates the concept and requisites of an intervention:

In *Neptune Metal Scrap Recycling, Inc. v. Manila Electric Company*, we expounded on the nature of an intervention:

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings. Intervention is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention. The allowance or disallowance of a motion to intervene is within the sound discretion of the court.

In *Falcis III v. Civil Registrar General*, we enumerated the three requisites that must concur for an intervention to be permitted:

Intervention requires: (1) a movant's legal interest in the matter being litigated; (2) a showing that the intervention will not delay the proceedings; and (3) a claim by the intervenor that is incapable of being properly decided in a separate proceeding.

As stated in *Falcis*, all three circumstances must concur for an intervention to be allowed: (1) the petitioner-intervenor should have legal interest in order to intervene in the main Petition; (2) intervention should not unduly delay or prejudice the adjudication of the original parties' rights; and (3) it should be the most appropriate remedy available to the intervenor.[128] (Citations omitted)

During deliberations, Senior Associate Justice Leonen and Justice Inting stressed that all the requisites for intervention are present in this case. First, Oceana is an internationally affiliated non-government organization focused on promoting sustainable fisheries and marine conservation, and allegedly played a key role in the passage of FAO No. 266. Rosales and Reyes, both fisherfolk, are directly impacted by the enforcement or lack thereof of the administrative order.

As to the delay that Oceana et al.'s intervention may cause, the RTC ruled in its May 25, 2021 Order:

The Court agrees with [*Royale Fishing et al.*] that the proposed intervention will only cause further delay to the proceedings. 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. There is a high probability that other entities of similar standing as the movant-intervenors would also intervene if they will be allowed by the Court. This will surely cause undue delay to the proceedings and prolong the adjudication of the rights of the original parties. Also, it will just complicate the issues further since more parties and more matters will have to be litigated by the Court.[129]

It is apparent that the above ruling was speculative. No proof was adduced that other non-government organizations advocating for the conservation of marine resources, or other fisherfolk, were set to file their own motions for intervention. Besides, the number of intervenors is not one of the considerations under Rule 19, Section 1 of the Rules of Court, which governs intervention in a litigation.

Furthermore, Senior Associate Justice Leonen observed that the proceedings before the RTC – from the injunction hearings to the trial proper – lasted only six months. Thus, a delay for a few months to hear the arguments of

Oceana et al. would not have significantly impacted the rights of Royale Fishing et al. This is especially true considering that a WPI had already been issued pending trial.

The Motion to Intervene was the most appropriate remedy for Oceana et al. since, as Justice Inting pointed out during the deliberations, it is the proceeding before the RTC that stalled the implementation of FAO No. 266. They could assail the WPI only through an action filed before the RTC that issued it and could not have done so through a separate proceeding. Justice Inting further added that allowing Oceana et al. to intervene would avoid multiplicity of suits and conflicting rulings.

The RTC also overlooked the fact that Oceana et al.'s co-petitioners, Rosales and Reyes, have sufficiently shown their legal interest. As municipal fisherfolk, their rights are directly affected and would be adversely impacted by either the enforcement or non-enforcement of FAO No. 266. The contention of Oceana et al. is well taken:

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

75. This preferential right notwithstanding, commercial fishing vessels have consistently defied express prohibitions against their operation within municipal waters. In fact, commercial fishing corporations, including [Royale Fishing et al.], have repeatedly violated the Fisheries Code and ordinance provisions against commercial fishing operations within municipal waters. Thus, the Petitioner-Intervenors will bear further injury should the unlawful restraining of the vessel measuring measures be allowed to continue as a result of the proceedings before the trial court.[130] (Emphasis supplied)

The submission was accompanied by news articles[131] on commercial vessels being apprehended for fishing within municipal waters.

Thus, it is undeniable that Rosales and Reyes have direct legal interest in the outcome of the case.

Considering the foregoing, the Court finds that the RTC erred in denying the Motion to Intervene filed by Oceana et al. in G.R. No. 257049.

To reiterate, as the issues sought to be raised by Oceana et al. through their intervention have been resolved by the RTC on the merits and now by this Court, the resolution of the issues raised by Oceana et al. in their Petition are confined to the propriety of their intervention.

The Court now proceeds to discuss the substantive issues.

Fishing activities constitute trade secrets; however, FAO No. 266 infringes only on the economic rights of Royale Fishing et al., and not on their constitutional right to privacy

The issues on the right to privacy, the right against unreasonable searches and seizures, and trade secrets are interrelated. These issues stem from the claim of Royale Fishing et al. that the information gathered and employed in fishing activities constitute trade secrets of the fisherfolk and owners and operators of fishing vessels.

Royale Fishing et al. argue that the information gathered by the VMS, such as the location of fishing vessels, and the kind of species thriving in a fishing ground at a certain point in time, constitute trade secrets.[132] They contend that these information are sensitive and proprietary, such that they and other fishing companies spend millions in identifying fishing grounds and keeping these information private. Thus, Royale Fishing et al. submit that they have a reasonable expectation of privacy to protect these information.[133]

Royale Fishing et al. further aver that the installation of VMS on fishing vessels amounts to illegal surveillance or unreasonable search because the information that will be gathered may, pursuant to Section 23 of FAO No. 266, be used as evidence for the prosecution of fishery or other offenses. They submit that this violates their right against unreasonable search and seizure because it authorizes the DA, the BFAR, and the law enforcement officers to gather evidence even before the determination of the existence of probable cause, as mandated by the Constitution.[134]

On the other hand, the Republic maintains that FAO No. 266 does not violate Royale Fishing et al.'s right to privacy because they have no expectation of privacy in the first place. It asserts that Royale Fishing et al. are juridical entities that are not afforded the right to privacy. And even assuming that they are given this right, their fishing activities must nevertheless be regulated by the State since they are granted only privileges, not rights, to utilize the State's resources.[135]

The Republic further asserts that there was no basis for Royale Fishing et al. to conclude that their right to privacy was violated by the installation of VMS, arguing that the information it gathers does not constitute trade secrets. It avers that abundant fishing grounds can be located by modern technology, and the real-time location of fishing vessels, even without VMS, can be tracked using Visible Infrared Imaging Radiometer Suite (VIIRS) or transceivers connected to global positioning system and satellite, available to the public.[136] The Republic further submits that even if these information were to be treated as trade secrets, they are, nevertheless, adequately protected by Republic Act No. 8550, as amended, which categorizes these data as sensitive technical information and penalizes any unauthorized disclosure thereof.[137] Lastly, the Republic points out that fishing vessels are already required to report their "fish catch and spoilage, landing points, and quantity and value of fish caught, and off-loaded for transshipment, sale, and/or other disposal." [138]

The Republic argues that considering the foregoing, no unlawful search or seizure is involved in the enforcement of FAO No. 266.[139]

The Court partially finds for Royale Fishing et al. The fishing activities of the fisherfolk and the owners and operators of fishing vessels constitute trade secrets. However, these trade secrets are proprietary rights and, as such, do not fall within the protection of the constitutional right to privacy.

In *Air Philippines Corp. v. Pennswell, Inc.*, [140] the Court explained the concept of trade secret:

A trade secret is defined as a plan or process, tool, mechanism[,] or compound known only to its owner and those of his [or her] employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

(1)

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

(2)

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

(3)

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

(4)

the value of the information to the employer and to competitors;

(5)

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

(6)

the extent to which the information could be easily or readily obtained through an independent source.[141]
(Emphasis supplied, citations omitted)

Additionally, the Uniform Trade Secrets Act (UTSA),[142] the law currently adopted by the District of Columbia and 48 states of the United States of America,[143] defines trade secrets, as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i)

derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii)

is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[144] (Emphasis supplied)

Here, it is apparent that the information gathered by the VMS fall within the definition of trade secrets. To be clear, what constitutes trade secrets is not the location of fishing grounds per se. Rather, it is the compilation of all information such as the plan, process, mechanism, or the "method, technique, or process" employed by Royale Fishing et al. and other fisherfolk and companies in the fishing industry that enable them to gain advantage over their competitors who do not possess or have not gathered the same information. In other words, the trade secret is not just fishing ground location per se, but it is the fishing ground coupled with the other information such as date and time, what type of catch, and when the catch may be plentiful in a given location.

The following explanation of Royale Fishing et al. clearly shows that their knowledge about the fishing trade comes within the purview of trade secret following the definition under the UTSA and Air Philippines. Their knowledge comprises of a compilation of information, methods, techniques, or processes that will provide them

with an advantage to obtain a more abundant catch compared to other fishing companies which do not have the same knowledge. It is also patent that Royale Fishing et al. have invested immense resources and exerted great efforts to maintain the secrecy of such knowledge:

110. Information on the position and location of a vessel on the fishing grounds directly affects the competitive advantage of a fishing company. Knowledge and mastery of fishing grounds, its location, date[,] and time of catching fish, kinds of species thriving in a specific location at that point in time, directly affect the volume of fish catch, which make them valuable trade secrets.

111. Reasonable efforts are in place to prevent the disclosure of trade secrets. It is a practice in commercial fishing industry that when vessels of a particular company navigate to its fishing grounds, radio operators of the same company communicate with one another using codes to keep secret from other fishing companies the location of their fishing grounds. This aims to at least create a strategic delay for competitors in knowing the whereabouts of a possible bountiful catch. In fact, the special knowledge and skills that fishermen learned and acquired on the job are a fishing company's proprietary information.[145] (Emphasis supplied)

It is worthy to note that Republic Act No. 8293,[146] or the Intellectual Property Code of the Philippines (IP Code), includes the "protection of undisclosed information" in the definition of "intellectual property rights," although there is no specific provision on it under the law. The Agreement on Trade-Related Aspects of Intellectual Property Rights[147] (TRIPS Agreement), on which the definition was based, expounds:

Article 39

1.

In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2.

Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

(a)

is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b)

has commercial value because it is secret; and

(c)

has been subject to reasonable steps under the circumstances, by the person lawfully in control of the

information, to keep it secret. (Emphasis supplied)

There is no doubt that the purported trade secrets sought to be protected by Royale Fishing et al. fall within the meaning of "undisclosed information" protected under the IP Code and the TRIPS Agreement. This compilation of information is secret as it is not generally known among those involved in the fishing industry. It is reasonable to expect that fisherfolk and owners and operators of fishing vessels employ different tactics in their fishing activities, and over time, have, on their own, developed what they think is the most effective and productive manner of fishing. This includes knowing when a fishing ground would yield abundant catch. Presumably, the strategies of each fisherfolk, owner, or operator, would spell out how much they would make from their catch. It is but expected that they would want to keep these proprietary information to themselves.

Notably, at various points during the pendency of the case, the Republic agreed that the information gathered by the VMS is considered trade secrets in the fishing industry. During the hearing on Royale Fishing et al.'s prayer for injunction before the RTC, the Republic's witness, Jefferson Dela Cruz (Dela Cruz), an operator and owner of a fishing vessel, opined that these information are trade secrets:

[Senior State Solicitor Melanie P. Pimentel (Atty. Pimentel), counsel for the Republic]
(REDIRECT EXAMINATION)

Q:

Mr. Witness, you mentioned that you are familiar with the "trade secrets" of nature of this information, is that correct [sic] the "trade secrets" information being fed on VMS device installed on your fishing vessel of FB Aleja?

[Dela Cruz]

A:

Yes, ma'am.

Q:

Do you agree with the contention that the information being fed into this VMS is considered a "trade secret" by you. For example[,] as a fishing vessel operator?

[Atty. Hilario Paul Ragunjan, counsel for Royale Fishing et al.]

Objection, Your Honor[,] leading.

COURT:

Witness may answer. She is just asking his opinion. Just his opinion.

WITNESS

Yes, ma'am.[148] (Emphasis supplied)

Another witness for the Republic, Rollan C. Geronimo, an IUUF and fisheries management expert, attested in his Judicial Affidavit,[149] dated January 8, 2021, that location of fishing areas constitutes fisher's secrets:

Question:

Are you familiar with the vessel monitoring system? Can you explain to us what is this vessel monitoring system all about?

Answer:

Yes, I am familiar with VMS. A Vessel Monitoring System is system used for tracking the location of fishing vessels at sea at certain time-intervals, in near real-time, usually with the use of space-borne satellites or land-based data receiving stations.

....

Most VMS have strong confidential and data privacy measures in place since the location of fishing areas are usually considered as part of fishers' secrets.[150] (Emphasis supplied)

Most significantly, no less than the Honorable Solicitor General Menardo I. Guevarra (Solicitor General Guevarra), during the interpellation conducted by Justice Caguioa, agreed that fishing grounds and the related information compiled by fishing operators are trade secrets:

JUSTICE CAGUIOA:

Alright. Discovered fishing grounds of fishing vessel operator[s] having a compilation of information on where the most abundant fish are, that can be trade secrets, correct?

[Atty. Arnold D. Naval (Atty. Naval), counsel for Royale Fishing et al.]

Correct, Your Honor.

JUSTICE CAGUIOA:

Mr. Solicitor General?

SOLICITOR GENERAL GUEVARRA:

Yes, but ephemeral.

JUSTICE CAGUIOA:

But ephemeral?

SOLICITOR GENERAL GUEVARRA:

Ephemeral, in a sense that the trade secret for as long as it remains secret.

JUSTICE CAGUIOA:

That's correct, but it's a compilation of information, longitude, latitude, depths, time of day, whether there's sun or there's moon. That's their information.

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor, but not [invocable] against the government.

JUSTICE CAGUIOA:

Okay, that's where we go. So, in other words, you recognize, Mr. Solicitor General, you recognize that there are trade secrets. In this particular case, you're saying that it cannot be invoked against the government.

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor.

....

JUSTICE CAGUIOA:

Alright. In Section 155 of the IRR of the Fisheries Code, it states that: "Department of Agriculture shall take such measures as may be necessary in order to protect trade, industrial, and policy information for Filipino fisherfolk, fisheries owners/operators, et al., when disclosure of such information will injure the competitiveness or viability of domestic fisheries." That is Section 155, Mr. Solicitor General?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor.

JUSTICE CAGUIOA:

Isn't this a recognition that the government is called upon by the Fisheries Code to respect or at least take measures to protect trade information?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor. That's correct.

. . . .

JUSTICE CAGUIOA:

So, is it correct for me to say, that what this case presents is a weighing of rights between the protection of trade secrets versus the right of the State to monitor? Is that a good way of characterizing what is the current issue before the Court?

SOLICITOR GENERAL GUEVARRA:

From the point of view of [Royale Fishing et al.], it would appear to be so, but not from the point of view of the government, Your Honor.

JUSTICE CAGUIOA:

In the (interrupted)

SOLICITOR GENERAL GUEVARRA:

Because the government is not a competitor of [Royale Fishing et al.].

JUSTICE CAGUIOA:

So, in other words, you will override or disregard their trade secrets so long as the purpose of the government is more paramount?

SOLICITOR GENERAL GUEVARRA:

That is true, but we are not overriding, Your Honor, the trade secrets being protected by [Royale Fishing et al.] because there are provisions of the law that [make] it criminal if information gathered by the government is leaked out. This is characterized as sensitive technical information.

JUSTICE CAGUIOA:

Yes.

SOLICITOR GENERAL GUEVARRA:

For which, any violation would be tantamount...

JUSTICE CAGUIOA:

Correct, but counsel, is that a real protection when the trade secret is already out? Isn't the protection for a trade secret precisely to keep it secret? Because if you're just saying, I can always sue the person who leaked it, then, the horse is out of the barn already.[151] (Emphasis supplied)

Whether it is ephemeral, or whether it can be invoked against the government, the Republic, through the OSG, categorically admitted that the information gathered and compiled by fisherfolk and fishing vessel owners and

operators are trade secrets.

The characterization of these information as trade secrets is not negated even if abundant fishing grounds can be located by modern technology, and the real-time location of fishing vessels by VIIRS, as argued by the Republic in its Memorandum.

During the deliberations of this case, Justice Caguioa submitted that determining whether fishing activities qualify as trade secrets is beside the point. He pointed out that Republic Act No. 8550, as amended, expressly acknowledges in Section 127 that such information is classified as "sensitive technical information." However, to the mind of the Court, the characterization of fishing activities as sensitive technical information does not preclude the fisherfolk and the owners and operators of fishing vessels from also treating them as trade secrets. On the contrary, this characterization strengthens their claim. It is important to reiterate that the submission that these activities are trade secrets remains undisputed by both parties.

Nevertheless, the Court holds that Royale Fishing et al.'s trade secrets with regard to their fishing activities do not fall within the scope and protection of the fundamental constitutional right to privacy.

The right to privacy is the "right to be let alone." It is intertwined with the constitutional right to liberty, although it is accorded recognition independently of its identification with liberty.^[152] The right to privacy has been defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities."^[153] It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned."^[154]

In *Valmonte v. Belmonte, Jr.*,^[155] the Court ruled that the right to privacy cannot be invoked by juridical entities, and that a corporation has no right of privacy in its name since the entire basis of the right to privacy is an injury to the feelings and sensibilities of the party and a corporation would have no such ground for relief.^[156]

In the more recent case of *Philippine Stock Exchange, Inc. v. Secretary of Finance*,^[157] the Court sustained the invocation of the right to privacy by the petitioners therein who were juridical entities. It must be noted, however, that what the petitioners in this case were invoking were the privacy rights of their individual investors. The Court held:

Petitioners argue that their right to privacy over their personal information protected by Republic Act No. 10173, or the Data Privacy Act, is violated. They insist that by requiring broker dealers to divulge personal information of their clients such as TIN, birthdate, and address, the questioned regulations would expose them to criminal penalties under the Data Privacy Act.

The Court finds that the questioned regulations violate petitioners' right to privacy.

Fundamental in our legal system is the recognition of the right to privacy. The case of *Morfe v. Mutuc* recognized that the right to privacy is embedded in the Constitution's due process clause:

4. The due process question touching on an alleged deprivation of liberty as thus resolved goes a long way in disposing of the objections raised by plaintiff that the provision on the periodical submission of a sworn statement of assets and liabilities is violative of the constitutional right to privacy. There is much to be said for this view of Justice Douglas: "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom." As a matter of fact, this right to be let alone is, to quote from Mr. Justice Brandeis "the most comprehensive of rights and the right most valued by civilized men."

The concept of liberty would be emasculated if it does not likewise compel respect for his personality as a

unique individual whose claim to privacy and interference demands respect. As Laski so very aptly stated: "Man is one among many, obstinately refusing reduction to unity. His separateness, his isolation, are indefeasible; indeed, they are so fundamental that they are the basis on which his civic obligations are built. He cannot abandon the consequences of his isolation, which are, broadly speaking, that his experience is private, and the will built out of that experience personal to himself. If he surrenders his will to others, he surrenders his personality. If his will is set by the will of others, he ceases to be master of himself. I cannot believe that a man no longer master of himself is in any real sense free."

The right to privacy or the right to be let alone, in Philippine jurisdiction, is accorded recognition independent from the right to liberty. Thus, it likewise deserves in itself full constitutional protection. Further, at least two more provisions in the Bill of Rights afford protection to the right to privacy: Section 2 on unreasonable searches and seizures, and Section 3 on privacy of communication and correspondence.[158] (Citations omitted)

In this case, however, Royale Fishing et al. are invoking their right to privacy on their own behalf in order to protect their trade secrets, which the Court cannot sustain because such invocation is primarily anchored on their economic interests and not on their fundamental right to liberty. Additionally, considering that Royale Fishing et al. are all juridical entities, they cannot invoke the constitutionally protected right to privacy.

Having established that FAO No. 266 does not interfere with the right of Royale Fishing et al. to privacy, but only their economic interests, it is now incumbent upon the Court to determine whether Fisheries Administrative Order No. 266 is a valid exercise of the State's police power.

In the landmark case of *White Light Corp. v. City of Manila*,^[159] the Court discussed the three tiers of judicial scrutiny of government regulations, namely: (1) strict scrutiny; (2) rational basis; and (3) heightened or intermediate scrutiny, as follows:

The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right." Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.

A third standard, denominated as heightened or [intermediate] scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. [Intermediate] scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.

We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United

States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access[,] and interstate travel.[160] (Emphasis supplied, citations omitted)

In *Samahan ng Progresibong Kabataan v. Quezon City*,[161] the Court summarized the three tests of judicial scrutiny to determine the reasonableness of a classification:

The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[162]

In *Zomer Development Company, Inc. v. Court of Appeals*,[163] the Court defined a "suspect class" as "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." [164] In the same case, the Court added that juridical entities cannot be considered a suspect class.[165]

Based on the foregoing, the Court rules that FAO No. 266 only needs to muster the rational basis test to be upheld as a valid exercise of the State's police power.

The rational basis test requires only (1) that there be a legitimate government interest and (2) that there is a reasonable connection between it and the means employed to achieve it.[166]

As to the first test, the Republic maintains that the installation of the VMM and ERS devices through FAO No. 266, is for the furtherance of the people's right to a balanced and healthy marine ecosystem in accord with the rhythm and harmony of nature, thus:[167]

213. With the installation of the VMM and ERS devised through FAO [No.] 266, the regulatory authorities are provided with "fishing positions, fishing activities, and any other activity of the vessel as may be required," which may be used for both fisheries management (i.e., time-limited fishing, restricted fishing areas, and catch quotas) and enforcement purposes. The use of VMS will allow authorities to track fishing activities in near real-time, identify suspicious activities, and monitor vessels encroaching on restricted areas, thereby helping to reduce IUU fishing.[168]

The Republic added that FAO No. 266 seeks to conserve marine resources, prevent IUUF in Philippine waters, and uphold the duty of the State to protect the people's right to a balanced and healthful ecology.[169]

The people's right to a balanced and healthful ecology in accord with the rhythm and harmony of nature is specifically recognized under Article II of the Constitution, entitled Declaration of Principles and State Policies.

Additionally, in the landmark case of *Oposa v. Factoran, Jr.*,[170] the Court declared that the right to a balanced and healthful ecology is a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and

imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.[171] (Emphasis supplied)

Based on the foregoing, it is undeniable that a legitimate State interest is present in this case.

With respect to the second test in the rational basis standard, the Court holds that the 24/7 monitoring of the location of a licensed fishing vessel, as well the round-the-clock reporting, being required under FAO No. 266 lack a reasonable connection with the legitimate interest invoked by the Republic.

When interpellated by Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo), Solicitor General Guevarra admitted that the VMS is incapable of detecting a number of IUUF violations:

CHIEF JUSTICE GESMUNDO:

....

Now question, the purpose of the installation of this VMS, Vessel Monitoring System, is to assure there is no illegal, unreported, unregulated fishing, IUUF, right?

SOLICITOR GENERAL GUEVARRA:

One of the purposes, Your Honor.

CHIEF JUSTICE GESMUNDO:

Okay. Can the VMS detect if cyanide fishing was resorted to?

SOLICITOR GENERAL GUEVARRA:

No, Your Honor.

CHIEF JUSTICE GESMUNDO:

Can the VMS determine if the fishing vessels accurately reported what they caught?

SOLICITOR GENERAL GUEVARRA:

That is possible, Your Honor. Because there would be a system of validation.

CHIEF JUSTICE GESMUNDO:

Can the VCM determine that that gadget [sic], the fishing vessel fished at a regulated area?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor, that can be detected because it would set an alarm if a certain vessel would be traversing a restricted zone.

CHIEF JUSTICE GESMUNDO:

Can the VMS determine overfishing?

SOLICITOR GENERAL GUEVARRA:

The matter of overfishing is the subject of studies based on the data collected through the VMS.

CHIEF JUSTICE GESMUNDO:

But the gadget cannot detect overfishing.

SOLICITOR GENERAL GUEVARRA:

Definitely not, Your Honor.

CHIEF JUSTICE GESMUNDO:

It cannot.

SOLICITOR GENERAL GUEVARRA:

It's just the catch for that particular day. But the whole thing aggregated together ...

CHIEF JUSTICE GESMUNDO:

So, the output desired from the use of VMS is no different from the present manual reporting being done by these fishing vessels?

SOLICITOR GENERAL GUEVARRA:

In a sense, yes. But it's real time, it's digitized, it's less prone to human manipulation, and for quick enforcement.

CHIEF JUSTICE GESMUNDO:

But do you know the reported data is based on the reporting of the human factor, right?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor.

CHIEF JUSTICE GESMUNDO:

The one encoding. How reliable is the effectiveness of this gadget, the VMS?

SOLICITOR GENERAL GUEVARRA:

That is very true, Your Honor, because if there is an intent really to transmit fraudulent or incorrect data, that is still possible.

CHIEF JUSTICE GESMUNDO:

Now, how do you address the illegal fishers? The vessels are not registered, they are not installed with VMS?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor. But as I said even without the VMS, there may be some other equipment that would enable the BFAR to detect them.

CHIEF JUSTICE GESMUNDO:

That is if the vessels are equipped with AIS?

SOLICITOR GENERAL GUEVARRA:

Yes, only if they are equipped with such other devices.

CHIEF JUSTICE GESMUNDO:

But if the vessels are illegal per se, no AIS, no VMS, how do you know or say that you can detect illegal fishing, IUU fishing?

SOLICITOR GENERAL GUEVARRA:

Well, according to the BFAR even those without any equipment at all may be faintly detected. Not completely blank but faintly detected.[172] (Emphasis supplied)

Crystal clear from the interpellation is that the VMS is not effective in detecting IUUF violations other than fishing within a protected or restricted area. Equally established is that the expected output from VMS "is no different from the present manual reporting" already being done by the fishing vessels. More, VMS cannot track unregistered or illegal fishers, except "very faintly." The Republic, thus, miserably failed to provide any evidence to show that VMS is more effective or even as effective as manual reporting in preventing unregistered fishing, unreported fishing, and the use of illegal fishing equipment, among others.

The following interpellation by Justice Caguioa of Atty. Naval further shows that, save for the real-time recording, there is not much difference between manual reporting and digital reporting. In fact, inputting one's location through the ERS may be manipulated:

JUSTICE CAGUIOA:

Alright. Can I ask? I had a form to be flashed. . . . Prior to VMS, this was the BFAR prescribed Fish Catch Report and Log Sheet. Correct? Or is it still being used today? Can I ask BFAR? It's in the screen.

BFAR ASSISTANT DIRECTOR PEREZ:

Yes, Your Honor, we are still using it at this time.

JUSTICE CAGUIOA:

Alright. Can I get confirmation from the respondents that your clients actually fill-in this information?

BFAR ASSISTANT DIRECTOR PEREZ:

Yes, Your Honor.

ATTY. NAVAL

Your Honor, to clarify, that form is for highly migratory species, Your Honor.

JUSTICE CAGUIOA:

Alright, but you have your own form for pelagic fishes, correct? And is it more or less the same?

ATTY. NAVAL

Your Honor, may I?

JUSTICE CAGUIOA:

Please.

ATTY. NAVAL

Your Honor,.... it's small, but it has small details, Your Honor.

JUSTICE CAGUIOA:

Can I borrow? I apparently have the wrong annex. Thank you. You're right[,] it's small. Based on this, this is a report that your client, the fishing company, would submit once it reaches the port to unload its catch, correct?

ATTY. NAVAL

Correct, Your Honor.

JUSTICE CAGUIOA:

And it indicates the longitude and latitude of where, of where your activities occurred, correct?

ATTY. NAVAL

Your Honor, yes, the longitude, latitude, but I've been informed, Your Honor, that it's submitted quarterly.

JUSTICE CAGUIOA:

Quarterly?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

Not when you deliver the catch? It's not on a daily basis?

ATTY. NAVAL

Not this one, Your Honor.

JUSTICE CAGUIOA:

Not this one?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

But there's another form?

ATTY. NAVAL

There's a form that their carriers submit to loading ports, unloading ports, Your Honor.

JUSTICE CAGUIOA:

Unloading ports.

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

Correct. And do they also indicate the way these forms indicate [sic] the kind of fish that has been caught?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

So, it says Skipjack, Yellowfin, Big eye, other species, there's even Tuna here.

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

So, in other words, a fishing vessel goes out to sea, catches fish, and then brings it back to port and reports it through these documents.

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

And the government or the port acting on behalf of the government can now see with its own eyes whether or not, oo nga yellow fish, tuna, etcetera, etcetera. The gross tonnage is this much, etcetera, tama iyong report.

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

Correct?

ATTY. NAVAL

Yes, Your Honor. They could verify.

JUSTICE CAGUIOA:

So, for purposes of determining only what has been caught, these documents already supply that?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

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

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

ERS. It's the same information?

ATTY. NAVAL

It's the same information, Your Honor.

JUSTICE CAGUIOA:

So, it's exactly the same information?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

And that information will go to the government but before, not real time. Now, because of this, it's real time?

ATTY. NAVAL

Yes, Your Honor. That's correct.

JUSTICE CAGUIOA:

Okay, Counsel, not that I'm telling you to do this, but is it possible for a fishing operator to stay in one place, fish there, go to another place, and that's the only time he inputs the information of what fish he caught in another place[?] Is that possible?

ATTY. NAVAL

If that will not [sic], Your Honor, there is a requirement in FAO [No.] 266 that, in a day, they should at least report one catch per day. So, they are required to report within 24 hours.

JUSTICE CAGUIOA:

Correct. So, in my scenario, where I go to my fishing ground here kasi as you said[,] [M]alaki 'yung dagat e, noh? [M]alaki rin iyong fishing ground ninyo. So, I go to one part of the fishing ground, I do my catching of fish there, I go to another part of the fishing ground and that's where I input the information in the ERS. Pwede kong gawin iyon[,] 'di ba?

ATTY. NAVAL

May, Your Honor.

JUSTICE CAGUIOA:

And that information is not inaccurate [sic]. It is the same amount of fish.

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

Correct?

ATTY. NAVAL

They can verify, Your Honor.

JUSTICE CAGUIOA:

It will just be inaccurate on where it is as to the location.

ATTY. NAVAL

As to the location, Your Honor.

JUSTICE CAGUIOA:

Correct?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

Therefore, it seems to me, that the ERS is forcing you to lie to protect your trade secret? Tama ba ako?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

And that's why you filed this suit because... (interrupted)

ATTY. NAVAL

We don't want to lie.

JUSTICE CAGUIOA:

....you don't want to lie?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

You'd rather that we make sure that [the] government gets its ability to monitor, but not at your expense?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

That's your position, correct?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

So, it all boils down to, ano ba ang nagagawa ng VMS for the government as far as monitoring is concerned na hindi nagagawa ng current systems, assuming those current systems are mandated by BFAR, because real time uploading of data reveals your trade secrets?

ATTY. NAVAL

Yes, Your Honor.[173] (Emphasis supplied)

Concededly, unregistered fishing is one of the serious issues in the maritime industry. In fact, in the Survey and Workshop Report on Quantifying the Prevalence of Illegal, Unreported[,] and Unregulated Fishing in the Philippines (2021 BFAR Survey and Workshop Report),[174] dated January 31, 2021, which was released by the DA and the BFAR, it was estimated that, at least 80,000 to 125,000 municipal fishing vessels in the country remain unregistered, or about 30% to 47% of the number of municipal fishing vessels registered in the BFAR's National Program for Municipal Fishing Boats and Gears Registration (BoatR) system. For commercial fishing vessels, 1,600 to 2,700 likely remain unregistered or incorrectly registered (i.e., they are commercial scale, but registered as municipal fishing vessels),[175] which account to 19.5% to 33% of the number of commercial fishing vessels registered in the BoatR.

The OSG would emphasize the VMS's utility in detecting when a fishing vessel enters a regulated area.[176] But this was not demonstrated to be the only way to track such intrusions, as the interpellation of the Chief Justice quoted above shows that other means exist to make such detections. As admitted by the OSG, the VMS would set

an alarm if a certain vessel traverses a restricted zone. As such, the 24/7 monitoring of fishing vessels when outside the regulated or restricted areas serves no practical purpose.

Additionally, it is notable that under FAO No. 260, the BFAR acknowledged that there are other mechanisms to track the location of a fishing vessel while at sea without resorting to the 24/7 monitoring functionality of the VMS. Section 23 of FAO No. 260 provides:

SECTION 23. Inoperability of Units. - In the event of a technical failure or non-functioning of the VMM on board the fishing vessel, the Master or Operator shall communicate this immediately to the FMC.

In the interim upon technical failure/non-functioning until return to port, the Master or Operator is required to conduct manual reporting every [four] hours by transmitting their positions through other communication channels (e.g. radio, phone, email, etc.) until the fishing vessel is docked and the failure reported to the DA-BFAR. (Emphasis supplied)

Indubitably, the availability of other means which are less intrusive and even more effective in preventing and detecting IUUF, makes the 24/7 monitoring required by FAO No. 266 unduly restrictive. VMS cannot even detect overfishing or unreported fishing.

For these reasons, the Court rules that FAO No. 266 cannot pass the rational oasis test for failing to meet the standard of reasonableness of the chosen means in connection with the interest sought to be protected by the State. Thus, FAO No. 266 must be struck down for being invalid.

FAO No. 266 amounts to unreasonable search and seizure for exceeding the parameters laid down in Republic Act No. 8550 and Republic Act No. 10654

Additionally, the Court finds that FAO No. 266 permits unreasonable searches and seizures.

The phrase "search and seizure" is defined as "the methods used to detect and punish crime that includes searching and taking property and data that can be used by the prosecution of the criminal." [177]

It is well to note that one of the objectives for the issuance of Fisheries Administrative Order No. 266 is "[t]o establish a system that will facilitate law enforcement and aid in case building and prosecution of fisheries law violations." [178] Also, the VMS data may be disclosed "[w]hen officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense." [179]

Based on the foregoing, the monitoring and collection of data using the VMS pursuant to FAO No. 266 amount to search and seizure.

A person's house, papers, or effects may be subjected to a search, provided that such is enforced through a valid search warrant. [180] A search warrant may be issued upon the determination of the existence of probable cause:

SECTION 4. Requisites for issuing search warrant. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he [or she] may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. [181]

However, the Court has, in several instances, recognized the following exceptions and allowed search and seizure even without a valid search warrant:

(1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations. [182] (Emphasis

supplied)

In the present case, the VMS, to a certain degree, may be considered a consented search. Even prior to the issuance of FAO No. 266, commercial fishing vessels were already required under Section 38 of Republic Act No. 10654 to provide detailed reports about their "daily record of fish catch and spoilage, landing points, and quantity and value offish caught, and off-loaded for trans[s]hipment, sale[,] and/or other disposal."

Additionally, Royale Fishing et al. admits that save for the real-time recording, there is not much difference between the manual reporting being done by commercial fishing vessels, on the one hand, and the digital reporting required under FAO No. 266. Verily, Royale Fishing et al. have consented to provide their fishing data to the BFAR.

However, there are significant features of the VMS that render it unreasonable, such as the recording of the destination or places where fish operators conduct their fishing activities, as well as the 24/7 reporting of their locations. Because of these functionalities, the Court finds that FAO No. 266 exceeded the parameters authorized under Republic Act No. 8550, as amended, for the monitoring, control, and surveillance of fishing vessels. Section 14 of the law provides:

SECTION 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, [Fisheries and Aquatic Resources Management Councils], the private sector[,] and other agencies concerned to ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens. The MCS system shall encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch. (Emphasis supplied)

However, it must be noted that Republic Act No. 8550, as amended, supplies the meaning of monitoring, control, and surveillance:

55. Monitoring, control[,] and surveillance —

(a) Monitoring — the requirement of continuously observing: (1) fishing effort which can be expressed by the number of days or hours of fishing, number of fishing gears and number of fisherfolk; (2) characteristics of fishery resources; and (3) resource yields (catch);

(b) Control — the regulatory conditions (legal framework) under which the exploitation, utilization[,] and disposition of the resources may be conducted; and

(c) Surveillance — the degree and types of observations required to maintain compliance with regulations. (Emphasis supplied)

It is readily apparent that the monitoring, control, and surveillance system intended by the law does not include the recording of the destination or places where fish operators conduct their fishing activities. This is apparent from the express definition of "monitoring" in the enabling law.

The monitoring, control, and surveillance system implemented by FAO No. 266 goes beyond what Republic Act No. 8550, as amended, authorizes. Thus, the RTC did not err in declaring the said administrative order unconstitutional for exceeding the bounds of the law for requiring the disclosure of information that is proprietary in character.

To the extent only that FAO No. 266 compels disclosure and recording of this proprietary information, the same is declared constitutionally invasive and impermissible.

The infirmity of FAO No. 266 becomes even more apparent considering the reportorial requirements mandated by Republic Act No. 10654. This law was enacted to amend Republic Act No. 8550 with the specific purpose of preventing, deterring, and eliminating IUUF. Even with this objective, Republic Act No. 10654 does not require fishing operators to report their location 24/7. This is patent from Section 38 of the amendatory law:

SECTION 38. Reportorial Requirements. — Each commercial fishing vessel shall keep a daily record of fish catch and spoilage, landing points, and quantity and value of fish caught, and off-loaded for trans[s]hipment, sale[,] and/or other disposal. Detailed information shall be duly certified by the vessel's captain and transmitted to BFAR within the period prescribed in the implementing rules and regulations promulgated by the Department. Failure to comply shall result to administrative and penal sanctions. (Emphasis supplied)

There is nothing in this provision that requires fishing operators to reveal all their fishing locations 24/7. It recognizes the established fact within the fishing industry that fishing locations are proprietary information. It is apparent that Republic Act No. 10654 already considered keeping and reporting "a daily record of fish catch and spoilage, landing points, and quantity and value of fish caught, and off-loaded for trans[s]hipment, sale[,] and/or other disposal" sufficient for authorities to deter IUUF. Otherwise, it would have included those other matters that need to be reported to ensure that no IUUF will be conducted by fishing operators.

FAO No. 266 violated the equal protection clause

The RTC held that FAO No. 266 violated the equal protection clause of the Constitution because it governed only commercial fishing vessels, but not municipal fishing vessels. According to the RTC, this was in violation of Republic Act No. 8550, as amended, because Section 119 thereof, pertained not only to commercial fishing vessels, but to municipal fishing vessels as well.[183]

Garcia v. Drilon[184] enlightens:

Equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. The oft-repeated disquisition in the early case of *Victoriano v. Elizalde Rope Workers' Union* is instructive:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman[,] and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[185] (Emphasis supplied)

Section 4 of Republic Act No. 8550, as amended, provides for the definitions of commercial fishing and

municipal fishing:

SECTION 4. Definition of Terms. — As used in this Code, the following terms and phrases shall mean as follows:

....

10. Commercial Fishing — the taking of fishery species by passive or active gear for trade, business[,] [and] profit beyond subsistence or sports fishing, to be further classified as:

(1) Small scale commercial fishing — fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to [20] GT;

(2) Medium scale commercial fishing — fishing utilizing active gears and vessels of 20.1 GT up to [150] GT; and

(3) Large scale commercial fishing — fishing utilizing active gears and vessels of more than [150] GT.

....

57. Municipal fishing — refers to fishing within municipal waters using fishing vessels of [three] gross tons or less, or fishing not requiring the use of fishing vessels.

Section 14 of Republic Act No. 8550, as amended, provides:

SECTION 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, [Fisheries and Aquatic Resources Management Councils], the private sector[,] and other agencies concerned to ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens. The MCS system shall encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch. (Emphasis supplied)

Additionally, Section 119 of Republic Act No. 8550, as amended, states:

SECTION 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. (Emphasis supplied)

It is clear from the above provisions that although there is a significant difference between commercial fishing and municipal fishing as defined by the law, Republic Act No. 8550, as amended, itself mandates that fishing vessels, whether they be engaged in municipal or commercial fishing, must comply with the VMM promulgated by the DA and the BFAR. Additionally, Republic Act No. 8550, as amended, only contemplates one monitoring, control, and surveillance system which shall encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch. Thus, the Court finds no justification that FAO No. 266, which implements Republic Act No. 8550, as amended, should govern commercial fishing vessels only.

During the deliberations, Senior Associate Justice Leonen, Justice Lazaro-Javier, and Justice Inting opined that the difference between municipal fishing vessels and commercial fishing vessels justified the classification with respect to the implementation of the MCS system. Senior Associate Justice Leonen submitted that Sections 14 and 119 of Republic Act No. 8550, as amended, should be read in conjunction with Sections 16 and 65 of the same law. They provide:

SECTION 16. Jurisdiction of Municipal/City Government. — The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the [Fisheries and Aquatic Resources Management Councils] shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the [Fisheries and Aquatic Resources Management Councils], enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

....

SECTION 65. Functions of the Bureau of Fisheries and Aquatic Resources. — As a line bureau, the BFAR shall have the following functions:

....

(n) enforce all laws, formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters, and to settle conflicts of resource use and allocation in consultation with the [National Fisheries and Aquatic Resources Management Council], LGUs and local [Fisheries and Aquatic Resources Management Councils];

....

(u) adopt an appropriate monitoring, control, surveillance[,] and traceability system for municipal fishing vessels supplying exporters with concurrence of the local government units; (Emphasis supplied)

Section 14 is clear that the MCS system should be established by the DA, although it should be done in coordination with the LGUs, [Fisheries and Aquatic Resources Management Councils (FARMCs)], the private sector, and other concerned agencies.

Section 16 mandates the municipal and city governments to manage, conserve, develop, protect, utilize, and dispose all fish and fishery/aquatic resources within their respective municipal waters. However, nowhere in the said provision are they given the power to formulate MCS system.

In Section 65, although subsection (n) provides that the BFAR shall "enforce all laws, formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters," subsection (u) clarifies that the power to adopt MCS and traceability system for municipal fishing vessels remains with the BFAR.

Lastly, Section 119 echoes the provision of Section 14 that the VMM shall be promulgated by the DA, although it must be done in coordination with the LGUs.

It is [a] hornbook doctrine in statutory construction that the whole and every part of the statute must be considered in fixing the meaning of any of its parts and to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[186]

Harmonizing Sections 14, 16, 65, and 119 of Republic Act No. 8550, as amended, it is clear that it is the DA and the BFAR which are vested with the power to promulgate vessel monitoring measures. What they are not empowered to do, under Section 65, is to enforce these measures in municipal waters as is it the concerned LGU which is empowered to do so. Nevertheless, the determination of the policy regarding VMM remains with them.

During the deliberations, Justice Inting pointed out that the Department of the Interior and Local Government has issued DILG Memorandum Circular No. 2018-59,[187] dated April 23, 2018, which mandated compliance with the MVV promulgated by DA-BFAR. However, this Circular does not contradict the finding that the determination and formulation of policies regarding MCS system lies with the DA and the BFAR. On the contrary, the said Circular supports this finding. It states:

6.0 Policy Content and Guidelines

....

6.4. ON THE MONITORING OF WATER QUALITY AND MARINE RESOURCES

....

6.4.4. All LGUs are to ensure that no municipal fishing vessel shall engage in fishing activity without complying with the vessel monitoring measures promulgated by DA-BFAR, through the implementation of the Vessel Monitoring System as a Monitoring, Control, and Surveillance Tool;

....

6.5. REGULATION OF PROHIBITED FISHERY ACTIVITIES

6.5.1. All cities and municipalities shall ensure that no person shall engage in the following acts:

....

w) [Noncompliance] with vessel monitoring measures[.] (Emphasis supplied)

Here, even the DILG recognized that the promulgation of the VMS is the function of the DA-BFAR, and all that the LGUs have to do is to implement such system and to ensure that no person should fail to comply with such policy. Thus, it is clear that it is the DA and the BFAR which have the power to formulate and promulgate rules on the VMS system.

Moreover, a comparison of the impact of municipal fishing and commercial fishing to marine resources shows that there is an equal need to monitor municipal fishing vessels.

The 2021 BFAR Survey and Workshop Report states that "threat of IUU fishing is likely the same from both municipal and commercial fishing, the former by the sheer number of municipal fishers and the latter by the huge fishing capacities of individual vessels." [188] The 2021 BFAR Survey and Workshop Report added that "most [IUUF in the Philippines] happens close to shore and within municipal waters." [189]

Moreover, the 2021 BFAR Survey and Workshop Report shows that the total illegal fish caught by municipal fishers is higher as compared to those illegally caught by commercial fishing operators. The final consensus estimates for illegal fish caught by municipal fishers ranged from 26% to 42% of the 2019 municipal marine capture fisheries production figure from the Philippine Statistics Authority (PSA). This translates to 256,721 metric tons to 402,035 metric tons of fish lost to illegal fishing in municipal waters, valued at PHP 24.10 billion to PHP 37.75 billion at 2019 prices. On the other hand, illegal catch from commercial fishing operations was estimated to be equivalent to 28% to 39% of the 2019 commercial fisheries production reported by PSA, or

259,316 metric tons to 364,197 metric tons, valued at PHP 17.67 billion to 24.82 billion at 2019 prices.[190]

For this reason, the Court agrees with the RTC that FAO No. 266 violated Republic Act No. 8550, as amended, itself, and consequently, the equal protection clause of the Constitution for its non-inclusion of municipal fishing vessels.

The issuance of FAO No. 266 deprived Royale Fishing et al. of their right to due process and their right to participate in the decision-making process

Article III, Section 1 of the Constitution enshrines the people's right to due process:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In *Philippine Stock Exchange, Inc. v. Secretary of Finance*,[191] the Court defined the scope of the right to due process under the 1987 Constitution:

The right to due process guaranteed by the Constitution encompasses substantive and procedural due process. Substantive due process pertains to government's denial or restriction on the right to life, liberty, or property; procedural due process pertains to the procedures that the government must follow before it deprives a person of life, liberty, or property. While the right has no exact definition, the standard in determining whether a person was accorded due process is whether the restriction on the person's life, liberty, or property is consistent with fairness, reason, and justice, and free from caprice and arbitrariness. As applied to procedural due process, the question to be asked is whether the person was given sufficient notice and opportunity to be heard.[192] (Emphasis supplied)

The Republic insists that due process was complied with before FAO No. 266 was issued. In its Memorandum, the Republic argues that there are only two procedural due process requirements in the promulgation of Fishery Rules and Regulations, namely: "a) the regulations shall be based on scientific studies; and b) consultations shall be conducted with affected stakeholders." [193] The Republic then insists that these two requirements were complied with by the BFAR in issuing FAO No. 266.

As to the first requirement, the Republic contends that the scientific study upon which FAO No. 266 is based is the 2006 Report of the Expert Consultation on the Use of Vessel Monitoring Systems and Satellites for Fisheries Monitoring, Control, and Surveillance held in Rome, Italy:

239. Clearly, the BFAR is not restricted from being guided by any scientific study in promulgating fisheries regulations. As pointed out by BFAR's witnesses, Rollan Geronimo and Atty. Demosthenes Escoto, VMS as a tool in fisheries management has already been recognized globally. The scientific bases for using the VMS have been tested by many other countries which have required its use for its national fishing fleets. These scientific studies and other pertinent information relied upon by the BFAR should be respected and given great weight.

240. The scientific study upon which FAO No. 266 is based is the Report of the Expert Consultation on the Use of Vessel Monitoring Systems and Satellites for Fisheries Monitoring, Control[,] and Surveillance held in Rome, Italy on October 24-26, 2006. Therein, the technical, legal, and institutional aspects of the use of VMS and satellites in MCS were reviewed and assessed by experts, and it was agreed that VMS was a valuable tool in combatting IUU. It was recommended that all states, including the Philippines, should cooperate to ensure the existence of a comprehensive MCS policy framework at the national and regional levels that integrated the legal, institutional, and technical aspects of the VMS.[194]

With respect to the second requirement, the Republic claims that it conducted a series of regional and national public consultations on FAO No. 266. The Republic added that FAO No. 266 was deliberated upon by the

National Fisheries and Aquatic Resources Management Council before it was recommended for issuance to the DA:

98. To comply with the procedural requirements mandated by RA 10654, petitioner BFAR conducted a series of regional and national public consultations on FAO [No.] 266. These consultations were clustered in the Visayas (Region VI, Region VII, Region VIII), South Luzon (Region IV-A, Region IV-B, Region V) and North Luzon (Region I, Region II, Region III), National Capital Region and Mindanao (Region IX, Region X, Region XI, Region XII, CARAGA[,] and BARM). The FAO was also deliberated upon by the National Fisheries and Aquatic Resources Management Council (NFARMC) before it was recommended for issuance to petitioner DA.

99. Official records would attest that respondents and the covered fishing vessel operators under FAO [No.] 266 were notified and given a chance to be heard on the subject PAO. The fact is that petitioner BFAR exerted due diligence in getting the position of the stakeholders, local governments, the academe, experts, non-government organizations, and fisherfolks before the issuance of FAO [No.] 266. These consultations were in fact admitted by respondents in open court. Hence, the due process requirements of notice and hearing were met and complied with in the issuance of PAO [No.] 266.

100. Similarly, after the FAO's issuance, petitioner BFAR, likewise, conducted several special meetings/dialogues to assist fishing vessel operators on the free installation of VMS and ERS devices on a first come, first served basis to 5,000 fishing vessels. As a matter of fact, respondent Royale Fishing Corporation has already availed of and applied for installation of the VMS on its fishing vessels in December 2020.[195]

Rule 65.2 of the DA Administrative Order No. 10, Series of 2015,[196] provides the process in formulating the rules and regulations in relation to Republic Act No. 8550, as amended, thus:

Rule 65.2. Formulation of Rules and Regulations. – In formulating rules and regulations, the DA-BFAR shall observe these principles:

a.

The regulation shall be based on scientific studies. In the conduct of scientific studies, stakeholders in the affected region shall be informed of the conduct of the study, its duration and the expert/s who will conduct the same. The stakeholders may nominate their own scientist/s to participate in the study or will be given the chance to provide comments on the scientist who will conduct the study;

b.

The consultation shall be conducted in all affected regions as may be practicable, taking into consideration the safety and accessibility of the venue to the stakeholders;

c.

Stakeholders shall be given at least [15] days prior notice of the date and venue of the consultation including the subject matter of the proposed regulation. The notice shall be published in a newspaper of general circulation in the region, where feasible; and,

d.

The proposed regulation shall be made publicly available at the BFAR website and BFAR Regional Offices at

least seven [] days prior to the consultation. (Emphasis supplied)

Contrary to the argument of the Republic, the Republic's discretion in choosing a scientific study upon which a regulation shall be based is subject to the following qualifications or limitations: first, the stakeholders in the affected region shall be informed of the conduct of the study, its duration and the expert/s who will conduct the same; second, the stakeholders must be given opportunity to nominate their own scientist/s to participate in the study; and, third, the stakeholders must be afforded the chance to provide comments on the scientist who will conduct the study. None of these qualifications have been complied with by the Republic, considering that the sole scientific study relied upon by the Republic was released in 2006, or almost 15 years prior to the issuance of FAO No. 266. Worse, the Republic did not even present the supposed scientific study to the stakeholders during the series of consultations that it conducted. The testimony of Atty. Benjamin F. S. Tabios, Jr., Chairperson of the Technical Working Group for FAO No. 266, is revealing:

Atty. Ragunjan:

Q:

Now based on the Minutes of the Meeting that you presented, Public Consultations for FAO [No.] 266 were conducted from November 2019 to January 2020, right?

A:

Yes, sir.

Q:

Do you confirm that during those supposed public consultations, participants were asking for the scientific study of FAO [No.] 266, right?

A:

That is correct, sir.

Q:

Now based on the same Minutes of the Meeting that you presented, do you confirm based on the Minutes that BFAR did not present any scientific study specific to the Philippines?

A:

With regards [sic] to that document, I never presented that document, sir.

....

Q:

Atty. Tabios, during the supposed Public Consultation from November 2019 to January 2020, did BFAR conduct any scientific study with the participation of the stakeholders in connection with FAO [No.] 266?

A:

No, sir.[197] (Emphasis supplied)

In the course of the deliberations, Chief Justice Gesmundo submitted that the principles encapsulated in Rule 65.2 are directory, not mandatory, requirements of procedural due process. In support thereof, he stressed—and Senior Associate Justice Leonen and Associate Justice Lazaro-Javier were of the same view—that compliance with procedural due process with respect to administrative bodies, is essential only in cases involving the exercise of their quasi-judicial powers. Here, the issuance of FAO No. 266 was an exercise of the DA and BFAR's quasi-legislative powers. Hence, no procedural due process was violated.

Justice Caguioa espoused a contrary view, finding that Rule 65.2 was mandatory. Hence, failure of the DA and the BFAR to comply with the procedure outlined therein invalidated FAO No. 266, it being violative of the right to due process of the various stakeholders, including Royale Fishing et al., Justice Caguioa remarked:

Had the requirements for the issuance of any regulation under the Fisheries Code been limited to notice and hearing, respondent Royale Fishing et al.'s arguments on public consultation would not merit much weight. However, the issuance of rules and regulations pursuant to the Fisheries Code is governed by specific guidelines.[198]

The Court adopts the position of Justice Caguioa.

There is no merit to the Republic's explanation that "VMS as a tool in fisheries management has already been recognized globally,"[199] This does not cure the failure of the DA and the BFAR to conduct a scientific study as required by the implementing rules and regulations that the DA itself issued, and to allow the affected public an opportunity to access such study and provide comments.

Even assuming for the sake of argument that scientific studies on VMS have been conducted abroad, and these were utilized by the DA and the BFAR, the fact remains that the Filipino fishing operators, who will be most affected by the implementation of FAO No. 266, had no participation in these studies. These foreign studies were not shown to have considered local context and environment to permit their application to domestic conditions.

More glaringly important, the palpable violation of Royale Fishing et al.'s right to due process is highlighted by the fact that the BFAR already acquired the VMS transceivers even prior to the conduct of consultations for the issuance of FAO No. 266. The proceedings before the RTC, particularly the testimony of the Republic's other witness, Marlo Demo-os, is enlightening on this matter:

Q:

Look at your Answer No. 17. You said that acquisition of VMS transceivers and ERS is part of the project, right?

A:

Yes[,] Attorney.

Q:

Now, when [were these] transceivers and ERS acquired by the BFAR?

A:

In 2019, Attorney.

Q:

2019, what month?

A:

I think somewhere around the first or second quarter of 2019.

Q:

What month is that?

A:

I can't remember the month, sir.

Q:

First half or second half of 2019?

A:

Around second quarter[,] Attorney. It's somewhere between around [sic] April.

Q:

April or May?

A:

Yes[,] it was between those months.

Q:

That means Mr. Demo-as, the acquisition of [these] VMS transceivers and ERS happened before the public consultation[s] for FAO [No.] 266 from November 2019 to January 2020, right?

A:

Yes[.]

Q:

In fact[,] Mr. Witness, the VMS transceivers and ERS that BFAR acquired in April to May 2019 were the ones that you presented to the stakeholders during the supposed public consultations from November 2019 to January 2020, right?

A:

Yes, Attorney.[200] (Emphasis supplied)

The fact that the BFAR already purchased the VMS transceivers and ERS demonstrates that the consultations were only conducted as a pro forma compliance with the law's requirements, and that the fishing vessel operators, who would be directly affected by the issuance of FAO No. 266, had no real opportunity to be heard and to give their comments on the proposed regulations.

Clearly, therefore, FAO No. 266 was adopted and is being enforced in violation of the stakeholders' due process rights.

There is no proof that the prevention of installation of the VMS in Philippine commercial vessels affects its obligations under pertinent international covenants

It is worthy to note that there is no sufficient proof on record that the RTC's issuance of the WPI and, later, the permanent injunction, affected the Philippines' relations with the European Union, or any other country. To recall, in the early stages of the case, the Republic manifested that the Philippines was issued a yellow card by the European Union for its alleged failure to adequately address IUUF, and that the same was lifted only after the passage of Republic Act No. 10654.

During the Preliminary Conference, the Republic primarily banked on the alleged threat of a "red card" from the European Union in arguing that there is an extreme urgency for the issuance of a TRO and/or WPI against the June 1, 2021 Decision of the RTC. The Republic claimed that a "red card" means a total ban of fisheries export products and the European Union allegedly threatened to issue the same should the Philippines fail to fully implement the VMS and ERS by the end of September 2023. The Court directed the Republic to submit a copy of any communication containing such threat of a "red card," among others.

In its communication, dated June 1, 2021, the European Union stated:

Taking into consideration the high volume of fishery products imported into the EU from the Philippines, in case of failure to meet the proposed timeframe to equip the national fleet with VMS, the Commission cannot not [sic] exclude taking further measures foreseen in Council Regulation (EC) No 1005/2008 (the EU IUU Regulation).[201]

There was no mention at all about the issuance of a red card. Nor was there any reference to it in any other document submitted by the Republic.

What is more, the Republic's Compliance,[202] dated September 29, 2023, readily shows that notwithstanding the RTC's issuance of a permanent injunction against FAO No. 266, as well as the purported warning of the European Union in its June 1, 2021 communication, there has been no decrease in the quantity or value of Philippine fisheries exports to the European Union in 2022. Notably, the data from the PSA cited by the Republic reveal that the total value of Philippine fisheries export products to Europe increased by 17.5% from USD 319,996,970.00 in 2021 to USD 375,848,007.00 in 2022.[203] Similarly, the quantity of the country's exported fisheries products to Europe increased from 77,459,882 kilograms in 2021 to 80,461,059 kilograms in 2022.[204]

Another point that resonates is that the European Union concerns cover mostly tuna catch, which only accounts for 37.93% of the total volume of commercial fisheries capture in the Philippines based on the data of the PSA for the year 2021. In other words, not all commercial fishing vessels are engaged in the catching of tuna. And even if they are, the catch are not exclusively traded to the European Union, as they may also be traded locally or with other non-European countries. In 2021, only around 18.21% of the value of the total commercial catch in the Philippines pertained to tuna exported to the European Union.[205]

The records of this case, thus, show that the issuance of a permanent injunction by the RTC did not materially or significantly affect the fishing industry, including the country's trade relations with the European Union, or with

any other country, for that matter. In the absence of evidence to the contrary, there is no reason to believe that the declaration of the unconstitutionality of FAO No. 266 will make a significant impact on the fishing trade. In any event, even if such were the situation, it would still not justify turning a blind eye and a deaf ear to the noted constitutional transgressions.

With the issuance of this Decision, which now resolves the merits of the consolidated Petitions, the Court deems it unnecessary to address the Republic's prayer for a TRO and/or WPI.

Disposition

In summary, Royale Fishing et al. appropriately availed of a Petition for Declaratory Relief in assailing the validity of FAO No. 266. After the RTC ruled in Royale Fishing et al.'s favor, the circumstances surrounding the case allowed the Republic and Oceana et al. to directly seek resort with this Court, the exceptions to the doctrine of hierarchy of courts having been established.

For the guidance of the Bench, the Bar, and the public, the Court upholds the constitutionality of Section 134 of Republic Act No. 8550, as amended, and declares the same to be an exception to Rule 2, Section 10 of the RPEC.

Lastly, the Court strikes down FAO No. 266 for failing to pass the Rational Basis Test and for being violative of Royale Fishing et al.'s constitutional rights against unreasonable searches and seizures, to due process, and to the equal protection of law.

A final note

There is no doubt that the issuance of FAO No. 266 by the DA and the BFAR was driven by noble intentions. After all, it merely tried to implement Republic Act No. 8550, as amended by Republic Act No. 10654, the goals of which include achieving food security for the entire population and ensuring "the rational and sustainable development, management[,] and conservation of the fishery and aquatic resources in Philippine waters. . . consistent with the primordial objective of maintaining a sound ecological balance, protecting and enhancing the quality of the environment." [206] Nonetheless, the chosen manner of implementation has been shown to transgress fundamental rights enshrined in the Constitution. In every instance when the Court is confronted with the need to weigh a State interest against the sacrosanct rights of its people, the scales must always tip in favor of the protection of the latter if the State interest can be preserved through lawful and less restrictive means. It is in cases such as this one that the Court fulfills its role as the "court of last resort," "the last bastion of right and justice" for citizens who face the overwhelming might and well-nigh unbridled authority of the State.

ACCORDINGLY, the Petition for Certiorari, docketed as G.R. No. 256282, filed by the Republic of the Philippines, is DISMISSED for being moot and academic. The Petition for Review on Certiorari, docketed as G.R. No. 256559, also filed by the Republic, is DENIED. The Decision, dated June 1, 2021, of Branch 170, Regional Trial Court, Malabon City, which declared Fisheries Administrative Order No. 266 null and void for being UNCONSTITUTIONAL is AFFIRMED.

The Petition for Review on Certiorari, docketed as G.R. No. 257049, filed by Oceana Philippines International, Pablo R. Rosales, and Ronaldo P. Reyes, is PARTLY GRANTED. The Orders, dated May 25, 2021 and June 23, 2021, of Branch 170, Regional Trial Court, Malabon City are REVERSED.

The Department of Agriculture, through the Bureau of Fisheries and Aquatic Resources, is directed to take immediate steps to rectify deficiencies in Fisheries Administrative Order No. 266 and report to this Court on the action taken.

The Manifestation, dated August 29, 2024, filed by the Office of the Solicitor General for the Republic of the

Philippines, the Counter-Manifestation, dated September 23, 2024, filed by Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., and RBL Fishing Corporation, and the Manifestation with Motion, dated December 29, 2025, filed by Oceana Philippines International, Pablo R. Rosales, and Ronaldo P. Reyes, are NOTED.

SO ORDERED.

Gesmundo, C.J., Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, Kho, Jr., and Villanueva, JJ., concur.

Leonen, SAJ., dissent. See separate opinion.

Caguioa, J., see separate opinion.

Hernando, J., see concurring opinion.

Lazaro-Javier, J., see dissent and concurrence.

Inting, J., see concurring and dissenting opinion.

Lopez, J., with separate concurring opinion.

[1] Rules and Regulations on the Implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Commercial Philippine Flagged Fishing Vessels Amending FAO 260, Series of 2018, October 12, 2020.

[2] Rollo (G.R. No. 256282), pp. 3-75.

[3] Id. at 76-80. Penned by Presiding Judge Zaldy B. Docena of Branch 170, Regional Trial Court, Malabon City.

[4] Id. at 90-112.

[5] In the proceedings before the RTC, they were named as private respondents in their own capacity, not as representatives of the Republic.

[6] Rollo (G.R. No. 256282), p. 80.

[7] Rollo (G.R. No. 256559), pp. 11-72.

[8] Id. at 73-103. The June 1, 2021 Decision in Special Civil Action Case No. SCA20-002-MAL was penned by Presiding Judge Zaldy B. Docena of Branch 170, Regional Trial Court, Malabon City.

[9] Id. at 103.

[10] Rollo (G.R. No. 257049), pp. 7-79.

[11] Id. at 80-83.

[12] Id. at 84.

[13] Id. at 85-92.

[14] Id. at 93-105.

[15] Id. at 284-300.

[16] Id. at 3-6.

[17] Rollo, (G.R. No. 256282), pp. 433-434.

[18] Rollo (G.R. No. 257049), pp. 1564-A-1564-B.

[19] Republic Act No. 8550 (1998), sec. 2.

[20] Republic Act No. 10654 (2015), An Act to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as "The Philippine Fisheries Code of 1998," and For Other Purposes.

[21] See also 1995 United Nations Fish Stock Agreement, approved on August 4, 1995, and entered into force on December 11, 2001, available at <http://www.oceansatlas.org/subtopic/en/c/1402/#:~:text=The purpose of the 1995, and 1995, and highly migratory fish stocks.> (last accessed on August 18, 2023).

The Philippines ratified the 1982 Convention on May 8, 1984.

The purpose of this agreement is "to facilitate the implementation of certain provisions of the 1982 United Nations Convention on the Law of the Sea (1982 Convention) concerning the conservation and management of straddling fish stocks and highly migratory fish stocks."

[22] Rollo (G.R. No. 256282), pp. 94-99.

[23] Id. at 99-100.

[24] Id. at 100-103.

[25] Id. at 104-106.

[26] Id. at 106-107.

[27] Id. at 80.

[28] Id. at 78-79.

[29] Rollo (G.R. No. 257049), pp. 199-200.

[30] No copy on record.

[31] Rollo (G.R. No. 256282), pp. 156-173.

[32] Id. at 174-175.

[33] Id. at 81.

[34] Id. at 82-85.

[35] Id. at 86-89.

[36] Id. at 87.

[37] Id.

[38] Id. at 18.

[39] Rollo (G.R. No. 256559), p. 290.

[40] SC Administrative Matter No. 09-6-8-SC, April 13, 2010, Rules of Procedure for Environmental Cases.

[41] Rollo (G.R. No. 256282), pp. 55-57.

[42] Id. at 50-53.

[43] Rollo (G.R. No. 256559), p. 103.

[44] Id. at 90-102.

[45] Id. at 28-29.

[46] Rollo (G.R. No. 257049), p. 87.

[47] Id. at 88-89.

[48] Id. at 89-90.

[49] Id. at 748-752.

[50] Id. at 754-764.

[51] Id. at 83.

[52] Id. at 81-82.

[53] Id. at 93-105.

[54] Id. at 84.

[55] Id. at 8.

[56] Id. at 27-28.

[57] Id. at 28-29.

[58] Rollo (G.R. No. 256282), pp. 380-411.

[59] Id. at 384-385.

[60] Id. at 385-387.

[61] Id. at 388-389.

[62] Id. at 391-396.

[63] Id. at 419-423.

[64] Id. at 425-426.

[65] Id. at 709-761.

[66] Id. at 712-714.

[67] Id. at 714-718.

[68] Id. at 718-751.

[69] Rollo (G.R. No. 257049), pp. 1836-1850.

[70] The Court was on an Intensive Decision Writing Break when these documents were filed.

[71] 849 Phil. 120 (2019) [Per J. Jardeleza, En Banc].

[72] Id. at 165-167.

[73] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[74] Gios-Samar, Inc. v. Department of Transportation and Communications, 849 Phil. 120, 173 (2019) [Per J.

Jardeleza, En Banc].

[75] Rollo (G.R. No. 256282), pp. 2090-2105.

[76] Republic v. Pryce Corp., Inc., 937 Phil. 639, 644 (2023) [Per J. Zalameda, En Banc].

[77] Rollo (G.R. No. 256282), pp. 2082-2085.

[78] Id. at 2085-2089.

[79] Rollo (G.R. No. 256559), p. 87.

[80] 937 Phil. 639 (2023) [Per J. Zalameda, En Banc].

[81] Id. at 644-645.

[82] 936 Phil. 17 (2023) [Per J. Leonen, En Banc].

[[83]] Id. at 32.

[84] Id. at 29-30.

[85] 744 Phil. 497 (2014) [Per J. Velasco, Jr., Third Division].

[86] Id. at 510. See also rollo (G.R. No. 256282), p. 2083.

[87] Rollo (G.R. No. 256282), p. 90.

[88] 456 Phil. 145, 157 (2003) [Per J. Ynares-Santiago, First Division].

[89] 879 Phil. 574 (2020) [Per J. Leonen, Third Division].

[90] Id. at 604-605.

[91] Republic v. Pryce Corp., Inc., 937 Phil. 639, 643 (2023) [Per J. Zalameda, En Banc].

[92] 861 Phil. 388 (2019) [Per J. Leonen, En Banc].

[93] Id. at 531-532.

[94] Universal Robina Corp. v. Department of Trade and Industry, 936 Phil. 17, 51-52 (2023) [Per J. Leonen, En Banc].

[95] 344 Phil. 30, 41 (1997) [Per J. Bellosillo, First Division].

[96] 429 Phil. 140 (2002) [Per J. De Leon, Jr., Second Division].

[97] Id. at 151-152.

[98] 900 Phil. 30 (2021) [Per J. Hernando, Third Division].

[99] Id. at 40-41.

[100] Rollo (G.R. No. 256282), p. 2119.

[101] Ranada v. Office of the President, 943 Phil. 164, 180 (2023) [Per J. Singh, En Banc], citing Timbol v. Commission on Elections, 754 Phil. 578, 585 (2015) [Per J. Leonen, En Banc].

[102] Rollo (G.R. No. 256282), pp. 20-23.

- [103] Office of the Ombudsman v. Valencerina, 739 Phil. 11, 21 (2014) [Per J. Perlas-Bernabe, Second Division].
- [104] OCA Circular No. 87-2016(2016), Prohibition Against the Issuance of Injunctions or Restraining Orders against Government Agencies Enforcing Environmental Laws and Preventing Violations Thereof.
- [105] Citing Heirs of Tan v. Department of Agrarian Reform, G.R. No. 249788, October 9, 2023 [Notice, First Division].
- [106] Estoconing v. People, 887 Phil. 696, 711 (2020) [Per J. Leonen, Third Division], citing Valencia v. Court of Appeals, 449 Phil. 711, 726 (2003) [Per J. Bellosillo, Second Division].
- [107] 757 Phil. 454 (2015) [Per J. Leonen, En Banc].
- [108] Id. at 471-473.
- [109] Republic Act No. 8975 (2000), An Act to Ensure the Expeditions Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for other Purposes.
- [110] 870 Phil. 32 (2020) [Per J. Reyes, J. Jr., First Division].
- [111] Id. at 40.
- [112] Rule 1, Section 2(q) of the RPEC provides:
- SEC. 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:
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- (q) [Republic Act] No. 8550, Philippine Fisheries Code[.]
- [113] Joint Ship Manning Group. Inc. v. Social Security System, 876 Phil. 596, 616 (2020) [Per J. Gesmundo, En Banc].
- [114] 502 Phil. 372, 386 (2005) [Per J. Carpio Morales, En Banc].
- [115] 332 Phil. 56, 63-64 (1996) [Per J. Francisco, En Banc].
- [116] 140 Phil. 20 (1969) [Per J. Castro, En Banc].
- [117] Id. at 30-31.
- [118] Republic v. Asuncion, 301 Phil. 216, 237-238 (1994) [Per J. Davide, Jr., En Banc].
- [119] Heirs of Peñaflor v. Heirs of dela Cruz, 816 Phil. 324, 346 (2017) [Per J. Perlas-Bernabe, First Division], citing Spouses Arquiza v. CA, 498 Phil. 793, 806 (2005) [Per J. Callejo, Sr., Second Division].
- [120] 946 Phil. 382 (2023) [Per J. Singh, Third Division].
- [121] Id. at 390.
- [122] 479 Phil. 148 (2004) [Per J. Carpio, First Division].
- [123] Id. at 161-162.

[124] TSN of the Oral Arguments, Atty. Michael Christopher De Castro, October 10, 2023, pp. 40-43.

[125] Rollo (G.R. No. 257049), p. 81.

[126] Section 1. Who may intervene. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

[127] 932 Phil. 1007 (2023) [Per J. Leonen, En Banc].

[128] Id. at 1017-1018.

[129] Rollo (G.R. No. 257049), p. 82.

[130] Rollo (G.R. No. 257049), p. 32.

[131] Francine Ciasico, 4 commercial vessels nabbed for illegal fishing off municipal waters in Palawan, MANILA BULL., August 17, 2019, available at <https://mb.com.ph/2019/08/17/4-commercial-vessels-nabbed-for-illegal-fishing-off-municipal-waters-in-palawan/> (last accessed on August 16, 2023); John Rey Saavedra, BFAR issues warning vs. illegal fishing operators in C. Visayas, PHILIPPINE NEWS AGENCY, January 21, 2021, available at <https://www.pna.gov.ph/articles/1128048#> (last accessed on August 16, 2023); and Sunnexusdesk, Commercial vessel nabbed for fishery code violation, SUNSTAR, available at <https://www.sunstar.com.ph/article/1892256/zamboanga/local-news/commercial-vessel-nabbed-for-fishery-code-violation> (last accessed on August 16, 2023).

[132] Rollo (G.R. No. 257049), pp. 2339-2350.

[133] Id. at 2350-2353.

[134] Id. at 2326-2334.

[135] Rollo (G.R. No. 256282), pp. 2126-2131.

[136] Id. at 2162.

[137] Id. at 2163-2164.

[138] Id. at 2164.

[139] Id. at 2131-2133.

[140] 564 Phil. 774 (2007) [Per J. Chico-Nazario, Third Division].

[141] Id. at 784-786.

[142] Uniform Trade Secrets Act with 1985 Amendments (1986) [United States of America].

[143] Cornell Law School, Trade Secret, available at https://www.law.cornell.edu/wex/trade_secret#:~:text=The%20Uniform%20Trade%20Secrets%20Act,Columbia%20have%20adopted%20the%20UTSA (last accessed on March 23, 2024).

[144] Uniform Trade Secrets Act (1986), sec. 1(4).

- [145] Rollo (G.R. No. 257049), p. 2340.
- [146] Approved on June 6, 1997.
- [147] The Philippines adopted the TRIPS Agreement on April 15, 1994.
- [148] TSN, Jefferson Dela Cruz, January 15, 2021, pp. 13-14. See Rollo (G.R. No. 256282), pp. 1792-1793.
- [149] Rollo (G.R. No. 256282), pp. 176-190.
- [150] Id. at 183-184.
- [151] TSN of the Oral Arguments, Solicitor General Menardo Guevarra November 21, 2023, pp. 67-70. See Rollo (G.R. No. 257049), pp. 2344-2346.
- [152] See *Morfe v. Mutuc*, 130 Phil. 415, 436 (1968) [Per J. Fernando, En Banc].
- [153] *Cadajas v. People*, 915 Phil. 220, 226 (2021) [Per J. Lopez, J., En Banc].
- [154] Id. at 226-227.
- [155] 252 Phil. 264 (1989) [Per J. Cortes, En Banc].
- [156] Id. at 275.
- [157] 924 Phil. 615 (2022) [Per J. Hernando, En Banc].
- [158] Id. at 642-643.
- [159] 596 Phil. 444 (2009) [Per J. Tinga, En Banc].
- [160] Id. at 462-463.
- [161] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].
- [162] Id. at 1113-1114.
- [163] 868 Phil. 93 (2020) [Per J. Leonen, En Banc].
- [164] Id. at 115.
- [165] Id.
- [166] Id. at 116.
- [167] Rollo (G.R. No. 256282), p. 2136.
- [168] Id.
- [169] Id. at 2137.
- [170] 296 Phil. 694 (1993) [Per J. Davide, Jr., En Banc].
- [171] Id. at 713.
- [172] TSN of the Oral Arguments, Solicitor General Menardo Guevarra, November 21, 2023, pp. 127-130.
- [173] TSN of the Oral Arguments, Atty. Arnold D. Naval, November 21, 2023, pp. 75-81.
- [174] BFAR, Quantifying the Prevalence of Illegal, Unreported[,] and Unregulated Fishing in the Philippines:

Survey and Workshop Report, available at <https://www.bfar.da.gov.ph/wp-content/uploads/2021/05/IUUFishingQuantificationReportFinal.pdf> (last accessed on March 20, 2024).

[175] *Id.* at 11.

[176] TSN of the Oral Arguments, November 21, 2023, p. 128. See *Rollo* (G.R. No. 256559), p. 1540.

[177] THE LAW DICTIONARY, "search and seizure," available at <https://thelawdictionary.org/search-and-seizure/> (last accessed on November 2, 2024).

[178] FAO No. 266 (2020), sec. 1(d).

[179] FAO No. 266 (2020), sec. 23(a).

[180] See *People v. Leng Haiyun*, 920 Phil. 830, 845 (2022) [Per J. Lopez, J., Third Division].

[181] RULES OF COURT, Rule 126.

[182] *People v. Leng Haiyun*, 920 Phil. 830, 845 (2022) [Per J. Lopez, J., Third Division].

[183] *Rollo* (G.R. No. 256559), pp. 100-102.

[184] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[185] *Id.* at 90-91.

[186] *Eizmendi, Jr. v. Fernandez*, 866 Phil. 638, 653-654 (2019) [Per C.J. Peralta, Special Third Division].

[187] DILG Memorandum Circular No. 2018-59 (2018), Policies and Guidelines on the Regulation and Monitoring of Fishery Activities in Municipal Waters.

[188] 2021 BFAR Survey and Workshop Report, p. 12.

[189] *Id.* at 17. (Emphasis supplied)

[190] *Id.* at 28.

[191] 924 Phil. 615 (2022) [Per J. Hernando, En Banc].

[192] *Id.* at 637.

[193] *Rollo* (G.R. No. 256282), pp. 2147-2148.

[194] *Id.* at 2148.

[195] *Rollo* (G.R. No. 256559), pp. 48-49.

[196] The Implementing Rules and Regulations of Republic Act. No. 8550, as amended by Republic Act No. 10654. Approved on September 22, 2015.

[197] *Rollo* (G.R. No. 256559), pp. 98-99.

[198] J. Caguioa, Separate Opinion, p. 25.

[199] *Rollo* (G.R. No. 256559), p. 45.

[200] TSN, Marlo B. Demo-os, January 13, 2021, pp. 12-13. See *Rollo* (G.R. No. 256559), pp. 1364-1365.

[201] Rollo (G.R. No. 256282), p. 2172.

[202] Id. at 2225-2230.

[203] Id. at 2226.

[204] Id. at 1469.

[205] In Annex A of the Republic's Compliance, dated September 29, 2023, the total value of tuna exported by the Philippines to the European Union amounted to USD 228,514,889.00, which is equivalent to PHP 11,255,409,451.74, using the Bangko Sentral ng Pilipinas average annual exchange rate for 2021, i.e., USD 1.00 is equivalent to PHP 49.2546.

This amount is approximately 18.21% of the value of the Philippines' commercial capture fisheries production in 2021, amounting to PHP 61,819,923,000.00, per PSA data cited in the BFAR's Philippine Fisheries Profile 2021, available at <<https://www.bfar.da.gov.ph/wp-content/uploads/2022/11/2021-Fisheries-Profile-FINAL-FILE.pdf>> (last accessed on January 5, 2026).

[206] Republic Act No. 8550, sec. 2, as amended.

DISSENTING OPINION

LEONEN, SAJ:

I dissent. The majority creates a legal void in our regulatory landscape for fisheries by declaring Fisheries Administrative Order No. 266 (FAO No. 266) unconstitutional. Our regulators will lose access to the tools necessary to establish a sustainable fishing industry, making them blind to fishing activities within our waters. The majority contradicts the Judiciary's movement toward efficiency, innovation, and access.

Our people rely on natural resources for their basic needs and livelihood. These resources, however, are finite and vulnerable to depletion through climate change, environmental degradation, and overuse. Without sufficient regulations, the "tragedy of the commons" teaches that a common exhaustible resource will be overused and eventually depleted, as users maximize their respective benefits from the same resource.[1]

Article XII, Section 2 of the Constitution provides basis for regulating the use of natural resources, with the State playing the dual function of both owner and steward:

Article XII

National Economy and Patrimony

....

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 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.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.[2] (Emphasis supplied)

In using this provision as basis for the public trust doctrine, this Court ruled that the State, as the trustee of natural resources, plays a crucial role in developing a sustainable and resilient ecology for current and future generations.[3] Thus, the State bears the responsibility to ensure that these resources are sustainably used for the benefit of all, as opposed to the few. Additionally, all use of property by any private individual, corporation, group, cooperative, or similar organization inherently bears a social function. Under Article XII, Section 6 of the Constitution, the State is constitutionally mandated to regulate the use of property in a manner that promotes the common good and distributive justice.[4]

As one of the three co-equal branches of the government, the Judiciary shares the same mandate under the Constitution to protect, preserve, and manage our natural resources for the public good. Judges who handle cases that assail government regulations over the use of natural resources are duty-bound to carefully assess how their decision will impact not only the parties or the ecology, but also our peoples' continued access to the country's natural resources.

FAO No. 266 is a State measure executing its duty to ensure a sustainable and resilient ecology for its people. The vessel monitoring system (VMS) requirement therein addresses the need to manage shared resources in a way that ensures our peoples' food security and guarantees government compliance with its obligations not only to its people, but also to the international community. This requirement similarly responds to current studies that declare Philippine waters as overfished and at risk for the collapse of its available fish stocks.[5]

Before this Court are three consolidated Petitions assailing several rulings of Branch 170, Regional Trial Court of Malabon City, in relation to a case which questioned the constitutionality of FAO No. 266.[6]

These consolidated Petitions originated from a Petition for Declaratory Relief with application for a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI) filed by private respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., and RBL Fishing Corporation (collectively, Royale Fishing et al.) before the Regional Trial Court, seeking to declare FAO No. 266 unconstitutional for being violative of their constitutional rights to privacy, equal protection, and due process.[7]

FAO No. 266 concerns the implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Philippine-flagged commercial fishing vessels. Among the imposed VMM is the requirement to install VMS which tracks, monitors, and manages fishing vessels, while the ERS is used to record, report, process, store, and send fisheries data.[8]

On January 22, 2021, the Regional Trial Court issued an Order granting Royale Fishing et al.'s application for

preliminary injunction prohibiting petitioners Department of Agriculture (DA), Bureau of Fisheries and Aquatic Resource's (BFAR), and National Telecommunications Commissions from implementing FAO No. 266.[9]

The trial court ruled that Royale Fishing et al.'s fear that their trade secrets might be divulged is not premature, speculative, and anticipatory. It held that, the "secret information gathered and recorded on the VMS and ERS. . . is regarded as an unfair practice and a violation of the trade secret protection safeguarded by law and the Philippine Constitution." [10]

This prompted the Republic of the Philippines (Republic) to file before this Court a Petition for Certiorari with a prayer for the issuance of a TRO and/or WPI, docketed as G.R. No. 256282, alleging that the trial court acted with grave abuse of discretion for issuing the injunction. Anchoring its claim that FAO No. 266 is governed by the Rules of Procedure on Environmental Cases,[11] the Republic insisted that only the Court can issue a TRO and/or WPI against its implementation.[12]

Meanwhile, the trial court proceeded with the trial of the case. On April 19, 2021, petitioners Oceana Philippines International (Oceana), Pablo R. Rosales (Rosales), and Ronaldo P. Reyes (Reyes) (collectively, Oceana et al.) filed a Motion to Intervene before the trial court. Oceana invoked the citizen's suit provided in the Rules of Procedure on Environmental Cases, while Rosales and Reyes invoked their standing as municipal fisherfolks, claiming that they are real parties-in-interest because they stand to benefit from the implementation of FAO No. 266.[13]

After finding all the requisites for a declaratory relief action to be in order, the Regional Trial Court issued the Decision dated June 1, 2021, granting Royale Fishing et al.'s prayer to declare FAO No. 266 null and void for violating their constitutional rights. The trial court also made permanent the injunction it earlier issued.[14]

The trial court ruled that the continuous and real time recording of Royale Fishing et al.'s trade secrets are "serious breaches to the security of the confidential and highly sensitive data,"[15] adversely infringing on Royale Fishing et al.'s constitutional right to privacy. It also held that the failure of the DA and the BFAR to produce a scientific study before formulating and implementing FAO No. 266 is a violation of Royale Fishing et al.'s right to due process.[16] Lastly, the trial court found that the exclusion of municipal fishing vessels from the coverage of FAO No. 266 violates the right to equal protection of commercial fishing vessels.[17]

Aggrieved, the Republic filed an appeal before this Court, docketed as G.R. No. 256559, arguing, among others, that Royale Fishing et al.'s petition failed to raise a justiciable controversy to warrant the issuance of a declaratory relief. The Republic also insists that the trial court erred in declaring that FAO No. 266 was unconstitutional.[18]

Prior to rendering the assailed Decision, the Regional Trial Court on May 25, 2021 issued an Order denying Oceana et al.'s Motion to Intervene.[19] The trial court found that the interest of Oceana et al. is "indirect, contingent, remote, conjectural, consequential, and collateral." [20] Further, it ruled that the intervention will only cause further delay to the proceedings.[21]

Subsequently, the trial court issued another Order on June 23, 2021 denying Oceana et al.'s Motion for Reconsideration.[22]

Oceana et al. then filed a Petition for Review on Certiorari before this Court, docketed as G.R. No. 257049, to appeal the trial court's denial of their intervention and its June 1, 2021 Decision declaring FAO No. 266 unconstitutional.[23]

The Court consolidated all three Petitions on November 18, 2021 and December 7, 2021.[24] The parties then filed their respective Comments.[25]

On August 22, 2023, the Court set the consolidated Petitions for oral arguments. Afterward, a preliminary conference was held on September 26, 2023. The oral arguments were held on October 10, 2023 and November 21, 2023, after which the parties were directed to submit their Memoranda.[26]

Royale Fishing et al. and Oceana et al. then filed their respective Memoranda on December 21, 2023, while the Republic filed its Memorandum on January 10, 2024.[27]

At its core, the issues for this Court's resolution are:

First, whether a petition for declaratory relief is the proper remedy in assailing the constitutionality of FAO No. 266;

Second, whether the Regional Trial Court acted with grave abuse of discretion when it issued the Writ of Preliminary Injunction prohibiting the implementation of FAO No. 266;

Third, whether the Regional Trial Court erred when it denied Oceana et al.'s intervention; and

Fourth, whether the Regional Trial Court erred when it declared as null and void, FAO No. 266 for being unconstitutional. This issue involves resolving the parties' primary contentions regarding the constitutional rights to privacy, due process, and equal protection.

I

The ponencia ruled that private respondents Royale Fishing et al. correctly availed of a petition for declaratory relief to question the constitutionality of FAO No. 266.[28]

I concur.

The Rules of Court provide a viable remedy for those whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation before its breach or violation, to determine any question of construction or validity arising, and for a declaration of rights thereunder.[29]

For a petition for declaratory relief to succeed, jurisprudence has established the following requirements:

[F]irst, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; second, the terms of said documents and the validity thereof are doubtful and require judicial construction; third, there must have been no breach of the documents in question; fourth, there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; fifth, the issue must be ripe for judicial determination; and sixth, adequate relief is not available through other means or other forms of action or proceeding.[30]

The Republic insists that Royale Fishing et al. failed to satisfy all requisites, except for the first.[31] Focusing on the third requisite, the Republic contends that at the time of the filing of the Petition, FAO No. 266 was already being implemented. Therefore, Royale Fishing et al.'s noncompliance is considered a breach, making declaratory relief an unavailable remedy.[32]

While in most cases, a breach in a deed, will, contract, or other written instrument ultimately leads to some form of damage and injury to a party to such document, I humbly submit that this does not squarely apply in instances where the constitutionality of a government regulation is in question.

The Court has already clarified in *Universal Robina Corp. v. Department of Trade and Industry*: [33]

[D]eclaratory relief as a remedy for constitutional challenge will succeed only when: (1) there is a clear and convincing contrariety of legal rights; or (2) facial review is allowed. Where neither condition exists,

declaratory relief is not available, and parties may resort to other remedies, as may be appropriate to the circumstances.[34]

In the same case, the Court further explained that there is an actual case and controversy when there is a clear and convincing showing of a contrariety of legal rights, a legal assertion with opposing claims that can be resolved through judicial means based on existing law and jurisprudence.[35]

In *Republic v. Pryce Corp., Inc.*,[36] the Court explained how to harmonize the third and fourth requisites for a declaratory relief as a vehicle for a constitutional challenge:

Applying the third and fourth requisites for a declaratory relief action, We must locate the fine point where there exists an actual case or controversy, yet there is no breach of the documents in question. On this note, former Chief Justice Moran opined that accomplished physical wrong need not be alleged in a petition for declaratory relief.

This is best explained in the case of *Republic v. Roque*, where a petition for declaratory relief was filed by private respondents to assail the constitutionality of RA 9372, or the Human Security Act of 2007. We explained that a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that, is conjectural or merely anticipatory. The term 'ripening seeds' means not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full-blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.

Following the disquisition in *Roque*, in a petition for declaratory relief, there are "sufficient facts" when there is a showing of an imminent and inevitable litigation if the issue is not judicially settled. The same rule was declared in *CJH Development v. BIR* where We ruled that ripeness in declaratory relief cases means that litigation is inevitable or there is no adequate relief available in any other form or proceeding. To require more than this standard will already negate the requirement that declaratory relief cases should be filed before any breach.[37] (Emphasis supplied, citations omitted)

Following the recent rulings in *Universal Robina Corporation and Pryce Corp. Inc.*,[38] I submit that the standard for bringing a case for declaratory relief in constitutional challenges is the imminence and inevitability of litigation if the issue—in this case, the constitutionality of FAO No. 266—is not judicially settled. Therefore, regardless of damage or injury to any party, the third and fourth requisites are satisfied when there is a clear and convincing showing of contrariety of legal rights—that is, an assertion of opposite claims between the parties susceptible of judicial resolution. As my esteemed colleague Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier) aptly observed, there is no practical or feasible case where an actual case or controversy exists without a breach of the statute.[39]

In any event, as the majority expressed, the parties have asserted opposing legal claims as to the constitutionality of FAO No. 266—a conflict of legal rights which makes a petition for declaratory relief a viable and proper remedy.[40] However, just because it is a viable procedural vehicle, does not mean that the relief sought will be granted. Nonetheless, the constitutionality of FAO No. 266 should be upheld.

II

I similarly concur with the majority's reasoning in resolving the issues of mootness and of the propriety of injunctive relief.

The Regional Trial Court correctly acted on the prayer for injunctive relief in respondent's Petition for Declaratory Relief. As the trial court converted the preliminary injunction into a permanent injunction, petitioner's

contentions on the propriety of the preliminary injunctive relief became moot and academic.

In discussing the need for review despite the mootness of the petition in G.R. No. 256282, the majority further examined an apparent inconsistency between the availability of injunctive relief under the Rules of Procedure in Environmental Cases and under Republic Act No. 8550, as raised by the parties.[41] The majority ruled that in order to harmonize and give full effect to the provisions of both issuances, Section 134 of Republic Act No. 8550 must be read as an exception to the broader prohibition on injunctive relief found in Rule 2, Section 10 of the Rules of Procedure in Environmental Cases:

In reconciling these two provisions, the necessary conclusion is that Section 134 of Republic Act No. 8550, as amended, may be construed as an exception to Rule 2, Section 10 of the RPEC. Thus, the general rule is that only this Court can issue a TRO or writ or preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof. By way of exception, Municipal Trial Courts and Regional Trial Courts may issue a TRO, preliminary injunction and preliminary mandatory injunction against the DA and BFAR in cases involving Republic Act No. 8550, as amended, provided that the following conditions are met: (i) the injunction shall lie only against the regulatory functions of the DA and BFAR; and (ii) it cannot be issued ex parte. An ex parte proceeding merely means that it is taken or granted at the instance and for the benefit of one party, and without notice to or contest from any party adversely affected. Thus, before an injunction may be issued under Section 134 of Republic Act No. 8550, as amended, it must be with notice to or contest by the DA and the BFAR.[42]

I agree with the majority's reading of these provisions. Again, however, my concurrence in the majority's findings on the procedural issues is qualified by my concerns regarding the disposition of the substantive issues.

III

The majority correctly ruled that the Regional Trial Court erred in denying Oceana et al.'s Motion to Intervene. However, I lament that the factual circumstances of this case and the poor handling of the lower court deprived petitioner-intervenors of the opportunity to be heard on an issue that directly impacts their lives.

In *Neptune Metal Scrap Recycling, Inc. v. Manila Electric Company*:[43]

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or Her right or interest that may be affected by the proceedings. Intervention is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention. The allowance or disallowance of a motion to intervene is within the sound discretion of the court.

Section 1, Rule 19 of the Rules provides that a court may allow intervention (a) if the movant has legal interest or is otherwise qualified, and (b) if the intervention will not unduly delay or prejudice the adjudication of rights of the original parties and if the intervenor's rights may not be protected in a separate proceeding. Both requirements must concur.

Section 2, Rule 19 of the Rules requires a movant to file the motion for intervention before the RTC's rendition of judgment and to attach a pleading-in-intervention. The court may allow intervention after rendition of judgment if the movant is an indispensable party.[44] (Citations omitted)

In this case, Oceana et al. complied with the requirements to be granted a motion for intervention.

First, the petitioner-intervenors are parties whose interest in this case is both material and direct. Oceana is an internationally-connected nongovernmental organization with a ten-year track record advocating for stricter monitoring, control, and surveillance.[45] As a public interest organization specializing precisely on the subject

matter in controversy, Oceana's, scientific knowledge and experience would have been vital in ensuring the complete and correct disposition of this case.

These matters were discussed during my interpellation of Oceana's counsel during the oral arguments:

Senior Associate Justice Leonen

And Oceana is. . . what are you?

Atty. De Castro

Essentially, Your Honor, we are representing the Filipino people here and everyone who. . .

Senior Associate Justice Leonen

No. What is Oceana? Are you an NGO?

Atty. De Castro

Yes, Your Honor. We are. . .

Senior Associate Justice Leonen

How long have you been in your advocacy for stricter monitoring, control and surveillance?

Atty. De Castro

If I remember correctly, Your Honor, it's about a decade now.

Senior Associate Justice Leonen

And you are not only here in the Philippines, but you are connected with an international network, is that correct?

Atty. De Castro

Yes, Your Honor.

Senior Associate Justice Leonen

As a matter of fact, you participated in a lot of advocacies?

Atty. De Castro

Yes, Your Honor, we have. . .

Senior Associate Justice Leonen

Including the ones resulting into this FAO?

Atty. De Castro

Exactly, Your Honor. The FAOs are products of a mandamus petition from us before, Your Honor.

Senior Associate Justice Leonen

In other words, you do have expertise in terms of the subject matter?

Atty. De Castro

Well, I would not call it expertise, Your Honor, but we have extensive knowledge, Your Honor.

Senior Associate Justice Leonen

Yes. And you can point to scientific studies which actually say, and I have here eight of them on the Philippines, which actually says how overfished we are.

Atty. De Castro

Yes, Your Honor.[46]

Wil

. . . .

Senior Associate Justice Leonen

Yes. And your interest is because as a public interest organization, you want to actually represent those that are not represented in this particular case.

Atty. De Castro

Exactly, Your Honor.[47]

Clearly, Oceana is the ideal party to bring forth a citizen suit to oppose Royale Fishing et al.'s claims.

The same conclusion applies to petitioners Rosales and Reyes, both municipal fisherfolk whose daily needs depend on fishing as their livelihood. Rosales, in particular, is the national president of PANGISDA Pilipinas and a member of both the National Anti-Poverty Commission and the National Fisheries and Aquatic Resources

Management Council.[48]

Additionally, the crux of this controversy involves fishing in Philippine waters, which is a part of the commons. As will be discussed below, this natural resource is not only one which the State is duty-bound to watch over as steward, but is also inextricably linked to the public's food security and many a citizen's livelihood. As such, it is undisputed that petitioner-intervenors have a stake in the outcome of this case. To rule otherwise would be to deny that Philippine waters are shared by the public.

Second, their intervention would not have unduly delayed the proceedings or prejudiced the rights of Royale Fishing et al. In fact, examining the timeline of the proceedings in the lower court shows that the case was resolved with haste.

To recall, Royale Fishing et al. filed the Petition for Declaratory Relief with Application for TRO and/or WPI on December 1, 2020.[49] Both Royale Fishing et al. and the Republic, through the Office of the Solicitor General, presented, their witnesses. On January 22, 2021, the Regional Trial Court granted the application for injunction.[50]

The Republic then filed a motion for reconsideration of the grant and asked for the suspension of the proceedings pending the resolution. The Regional Trial Court, however, denied Republic's prayer to suspend proceedings in its February 8, 2021 Omnibus Order,[51] and issued its April 6, 2021 Order stating that trial of the main case will proceed.[52]

Less than 15 days later, or on April 19, 2021, Oceana et al. filed their Motion to Intervene.[53] The Regional Trial Court denied the motion in its May 25, 2021 Order. Soon after, the June 1, 2021 Decision was rendered granting the petition and declaring the permanence of the writ of preliminary injunction.[54]

The proceedings before the Regional Trial Court—from the injunction hearings to the trial proper—lasted six months. Clearly, a delay of a few months to hear the issues and arguments of petitioner-intervenors would not have impacted the rights of Royale Fishing et al. I assert that any detrimental effect on Royale Fishing et al.'s rights due to a prolonged litigation is inconsequential in light of the magnitude of the controversy and the public's stake in defending their rights.

Considering the far-reaching impacts of the disposition of this case, the Regional Trial Court should have stayed its hand and acted judiciously. Instead, petitioner-intervenors were grievously deprived of the opportunity to assail the denial of their motion and be heard on the merits of this case. The court's failure to look beyond the arguments of the original parties is-a denial of equal access to justice, one that must never be repeated.

IV

On the substantive issues, Royale Fishing et al. argue that the information collected by the VMS, particularly the real-time location of their fishing vessels and pertinent data regarding their fishing activities, constitute trade secrets and are protected by the right to privacy.[55] On the other hand, the Republic insists that Royale Fishing et al. have no expectation of privacy because the State has the right to regulate the utilization of its resources—fishing activities, in this case.[56]

The majority agrees with Royale Fishing et al. that the data being collected pursuant to FAO No. 266 constitutes trade secrets, but ruled that only their economic rights are infringed and not their constitutional right to privacy.[49] These conclusions resulted from the majority's analysis that trade secrets are "the compilation of all information such as the plan, process, mechanism, or the 'method, technique, or process' employed by Royale Fishing et al. and other fisherfolk and companies in the fishing industry that enable them to gain advantage over

their competitors who do not possess or have not gathered the same information." [57] Thus, according to the majority, the information gathered by the VMS falls within the definition of trade secrets. [58]

I agree with the majority that the VMS requirement does not infringe respondents' right to privacy, as the collection of data from fishing operations does not affect the "fundamental right to liberty." [59] In fact, valid fishing licenses already require disclosures of similar data that the majority equates to a "consented search." [60] Thus, respondents do not enjoy a reasonable expectation of privacy in their activities and the State's collection of fishing data through the VMS does not violate right to privacy or the right against unreasonable searches and seizures.

However, with utmost respect, I disagree that some data collected by the VMS constitutes trade secrets, and thus, violates respondents' property rights. Even assuming that this data amounts to a trade secret, the regulatory purpose of FAO No. 266 and the nature of the fisheries industry justify its collection by the relevant agencies. The Philippine fishing industry has been long overdue for the regulatory advancements brought about by technology. Our rapidly diminishing marine resources and the communities that depend on them for subsistence cannot continue to shoulder the burden of an inadequate regulatory system for fisheries. The adoption of electronic monitoring through VMS, which tracks real time location, among other data, has proven its effectiveness in meeting the purpose of monitoring, control, and surveillance measures under Republic Act No. 8550. Thus, the measures imposed under FAO No. 266 have a reasonable connection to the Republic's legitimate interest, i.e., curbing illegal, unreported, and unregulated fishing (IUUF). In any event, I maintain that such collection does not infringe on the protections available to trade secrets under our jurisdiction.

I further submit that private ownership over fisheries and fisheries data is inconsistent with the State's duty of stewardship and public trust over the commons. Finally, FAO No. 266 does not violate either the respondents constitutional right to privacy or their property rights.

IV (A)

I agree with the majority that respondents' fishing data is not protected by the right to privacy. [61] Rather, their invocation of trade secrets only gives them a supposed right to conduct their business in a preferred manner, and not the enjoyment of the "fundamental right to liberty." [62]

The right to privacy is the right to be "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." [63] In my Separate Concurring Opinion in *Cadajas v. People*, [64] I elaborated upon the nature and source of this right:

Right to privacy is a fundamental right under the Constitution. In essence, it is the "right to be let alone." It "is an essential condition to the dignity and happiness and to the peace and security of every individual, whether it be of home or of persons and correspondence." It is equally fundamental yet distinct as the right to liberty itself:

Liberty in the constitutional sense not only means freedom from unlawful government restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is the beginning of all freedom — it is the most comprehensive of rights and the right most valued by civilized [humans].

....

The right to privacy has many facets protected under the Constitution and our laws:

Indeed, if we extend our judicial gaze[,] we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights:

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

Other facets of the right to privacy are protected in various provisions of the Bill of Rights, viz.:

Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

....

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

....

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself.[65]

The speech of retired Chief Justice Reynato Puno entitled "The Common' Right to Privacy" refined our understanding of the right to privacy when he identified its three aspects: locational privacy, informational privacy, and decisional privacy.[66] Informational privacy, the most analogous to the present controversy, is the "right to control 'the processing—i.e., acquisition, disclosure, and use—of personal information.'"[67]

This Court laid down a two-fold test to determine whether a particular issue falls within the scope of one's right to privacy: "[t]he first is a subjective test, where one claiming the right must have an actual or legitimate expectation of privacy over a certain matter. The second is an objective test, where his or her expectation of privacy must be one society is prepared to accept as objectively reasonable." [68] This Court's discussion on the zones of privacy is instructive:

Zones of privacy are recognized and protected in our laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized men," but also from our adherence to the Universal Declaration of Human Rights which mandates that, "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks." [69]

The right against unreasonable searches and seizures is similarly an aspect of the right to privacy. Stating that this right depends on a reasonable expectation of privacy, *Saluday v. People* [70] traced the right's origins to the United States Constitution's 4th Amendment, but specifically defined its application in our jurisdiction through our jurisprudence:

The prohibition of unreasonable search and seizure ultimately stems from a person's right to privacy. Hence, only when the State intrudes into a person's expectation of privacy, which society regards as reasonable, is the Fourth Amendment triggered. Conversely, where a person does not have an expectation of privacy or one's expectation of privacy is not reasonable to society, the alleged State intrusion is not a "search" within the

protection of the Fourth Amendment.

A survey of Philippine case law would reveal the same jurisprudential reasoning. To illustrate, in *People v. Johnson*, the Court declared airport searches as outside the protection of the search and seizure clause due to the lack of an expectation of privacy that society will regard as reasonable:

....

Similarly, in *Dela Cruz v. People*, the Court described seaport searches as reasonable searches on the ground that the safety of the traveling public overrides a person's right to privacy:

....

In *People v. Breis*, the Court also justified a bus search owing to the reduced expectation of privacy of the riding public:

....

Indeed, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case. Other factors such as customs, physical surroundings and practices of a particular activity may diminish this expectation. In *Fortune Express, Inc. v. Court of Appeals*, a common carrier was held civilly liable for the death of a passenger due to the hostile acts of armed men who boarded and subsequently seized the bus[.][71] (Emphasis supplied, citations omitted)

The cases cited in *Saluday* commonly refer to the overriding interest of public safety when assessing possible violations of the right against unreasonable search and seizure. However, *Saluday* emphasizes that the assessments must be made on a case-to-case basis as "[o]ther factors such as customs, physical surroundings and practices of a particular activity"[72] may affect one's expectation of privacy.

Respondents claim that their fishing data is protected by the right to privacy. This claim is belied by their application and securance of their respective fishing licenses. The mere act of applying for these licenses is an acknowledgement of the Republic's duty to uphold the responsible use of its waters through the adequate regulation of fishing activities. There would have been no need to seek State permission through a license to access Philippine fishing grounds if respondents believed otherwise. To add, respondents likewise promised to abide by the conditions imposed by their respective licenses.

Further, respondents do not possess any exclusive license to fish over Philippine waters nor can they legally prevent another boat from fishing in the same location. This contradicts any allegation of privacy since the physical spaces for fishing activities are inherently shared and necessarily non-exclusive. As such, respondents failed to hurdle the subjective test for determining a reasonable expectation of privacy.

The same situation obtains for the objective test and for an assessment of respondents' expectation of privacy in their fishing activities. Respondents exercise their business activities in a carefully and heavily regulated field—the fishing industry. Therefore, any entity that intends to operate in it must secure the appropriate licenses and submit to necessary regulations. Further, fishing activities require specific disclosures, which are of public interest and concern because they affect not only the licensee's own commercial interests, but also the sustainability of the natural resources upon which the regulated industry depends.

Clearly, respondents failed to hurdle both the subjective and objective tests as regards their assertion that the information sought to be collected by the VMS is protected under the right to privacy. Respondents also failed to show a reasonable expectation of privacy in their activities.

IV (B)

While the majority finds no violation of respondents' right to privacy, it ruled that their trade secrets are at risk. It held that "trade secret is not just fishing ground location per se, but it is the fishing ground coupled with the other information such as date and time, what type of catch, and when the catch may be plentiful in a given location." [73]

I respectfully disagree. The minimum information gathered by the VMS does not constitute trade secrets.

To be considered a trade secret, the following requisites must be met: (a) it must be a secret; (b) it is protected by reasonable safeguards; and (c) it has commercial value due to its secrecy. The secrecy aspect is vital, emphasizing that the confidential nature of the information, which could harm the business if disclosed. [74] Thus, at its core, a trade secret is information safeguarded due to its competitive advantage, such as customer lists and proprietary information. These business details must be kept confidential to maintain its worth. The unauthorized use of a trade secret constitutes unfair practice. [75]

In *Air Philippines Corp. v. Pennswell, Inc.*, [76] the Court explained the concept of trade secret and provided the definition:

A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

(1)

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

(2)

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

(3)

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

(4)

the value of the information to the employer and to competitors;

(5)

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

(6)

the extent to which the information could be easily or readily obtained through an independent source.[77]
(Emphasis supplied, citations omitted)

Respondents insist that the information collected through VMS are trade secrets. They claim that there is a real, imminent, and continuing violation of their rights once this information is collected and stored in the VMS as their information is no longer secret.[78]

This claim is unmeritorious.

First, a party's mere declaration that a piece of information is a trade secret is insufficient to classify it as such. Jurisprudence requires that "the confidential nature of technologies, processes, formulae or other so-called trade secrets must have a substantial factual basis which can pass judicial scrutiny." [79] As such, these invocations should not be taken at face value by this Court.

An analysis of the minimum information required to be collected by the VMS is found in Section 4 of FAO No. 266. This provision requires the use of an Electronic Reporting System (ERS) to record and report fisheries data to the DA and the BFAR:

Section 4. Electronic Reporting System (ERS)

ERS shall be used to record and report catch data to the DA-BFAR for all vessels subject to VMM.

All catcher vessels 30 GT and above operating either in the high seas or with access rights to fish in other coastal states and/or fishing in the Philippine EEZ shall have an installed Electronic Reporting System which can connect to the VMS transceiver to send fishery information to BFAR.

For all other vessels, a combination of onboard and port ERS systems shall be implemented to electronically capture and report catch information.

The ERS must be able to provide BFAR with the following minimum information:

- Species and volume of fish caught
- Position of the vessel where the fish was caught
- Date and Time
- Vessel activity
- Port of Origin and Arrival
- Tracking and reporting devices used
- Margin of tolerance and weight for catch reporting
- Data manual reporting in case of operational failure[.][80]

These data are not trade secrets. As correctly ruled by the majority, the location of fishing grounds does not qualify as a trade secret. Besides, the location of any vessel at sea is already publicly available data and is even monitored by Philippine authorities through means other than VMS. Thus, insofar as locational or situational information is concerned, Philippine authorities possess the capability to detect and locate vessels—whether

Philippine or foreign flagged—within Philippine waters.

Second, the data collected by the VMS via the ERS were already required to be recorded and reported by fishing vessels to the BFAR prior to FAO No. 266, albeit manually. Section 31 of FAO No. 198-1, series of 2018 reads:

Section 31. Reportorial Requirements and Catch Documentation.

Each commercial fishing vessel shall keep a daily record of fish catch and spoilage, landing points, and quantity and value of fish caught, and off-loaded for transshipment, sale and/or other disposal. Detailed information shall be duly certified by the vessel's captain and transmitted to BFAR within the period prescribed in the implementing rules and regulations promulgated by the Department. Failure to comply shall result to administrative and penal sanctions.

The fishing logsheets or daily record offish catch shall be submitted to the BFAR Regional Office upon the completion of the fishing trip and the data therein shall be analyzed and used for fisheries management.[81]

Digitalizing these log sheets through the ERS is not only a more efficient means of reporting, but it also significantly reduces human errors and inaccuracies. Ultimately, the implementation of the VMS plays a critical role in combating IUUF by facilitating effective law enforcement. It ensures that fishing vessels operate where they are supposed to, catch the fish they are allowed to, and accurately report the volume and species of fish caught.

Third, the mere recording and reporting of fishing data from each vessel to the BFAR, as required under Section 4 of FAO No. 266, does not strip the information of its "secrecy" nor constitute a disclosure of the supposed trade secret.

As discussed in materials published by the BFAR, the VMS is composed of several devices and systems that work together in gathering information relevant to the fisheries regulation[82]—this includes an onboard vessel transceiver (AIS), which reports vessel "position, speed, course, and other information such as vessel identity with similarly equipped vessels,"[83] and a device for electronic reporting of catch data. These devices transmit vessel data to port and coastal monitoring centers through satellite and terrestrial transmission systems. This data is then collated in a central data center for use in fisheries management and policy development.[84]

Executive Order No. 57, series of 2011, as amended by Executive Order No. 57, series of 2024, created the National Maritime Council[85]—an organization in charge of formulating policies and strategies to ensure a unified, coordinated and effective governance framework for the country's maritime domain, maritime security, and maritime domain awareness.[86]

Concurrently, the National Maritime Center, headed by the Philippine Coast Guard, is responsible for implementing and coordinating maritime security operations including the following functions:

- Gather, consolidate, synthesize and disseminate information relevant to the country's maritime security and domain awareness;
- Develop and maintain effective communications and information systems to enhance inter-agency coordination on maritime security and domain awareness;
- Coordinate the conduct of maritime surveillance upon the request of a member-agency or when an exigency arises;
- Monitor, evaluate, document and report on the conduct of maritime security operations;
- When so authorized by the Council, and in coordination with the DFA, coordinate and initiate cross-border and

multinational maritime security cooperation;

- Coordinate support for the prosecution of apprehended violators;
- Conduct periodic assessments on maritime security and domain awareness, and develop a common operating picture to enhance maritime situational awareness; and
- Perform such other functions as may be directed by the Executive Secretary or the Council.[87]

However, the information that the VMS will monitor, record, gather, and control will only be recorded and reported to the BFAR through the Fisheries Monitoring Center. Further, a user manual provided by BFAR's VMS supplier states that "[a]ll transmissions are encrypted such that only authorized control centers can view the location of each vessel." [88] Clearly, there are measures in place to ensure the confidentiality of any information gathered through the VMS.

Aside from the BFAR, Section 8 of FAO No. 266 allows commercial fishing vessel owners or operators to access data gathered by the VMS via the ERS, but only with respect to their own vessel. Thus, the VMS information that supposedly amounts to a trade secret remains confidential. No violation of respondents' rights occur through the implementation of VMS.

There are also penal sanctions to deter any unlawful or unauthorized disclosure of VMS data. Section 127 of the Fisheries Code, as amended, and Section 23 of FAO No. 266 provides for safety measures to ensure that the data collected by the VMS and ERS remain strictly confidential:

Section 127. Unauthorized Disclosure of Sensitive Technical Information. – Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information. Any unauthorized disclosure of said data including all other data referred to in Section 155 in this Code, by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

Section 23. Confidentiality and Authorized Disclosure of Sensitive Technical Information

VMS data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information, except in the following instances of authorized disclosure, provided the affected party is informed of such disclosure:

- When officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense;
- When requested by the flag coastal or port state for its own investigation or traceability; or
- Other analogous circumstances.

Any unauthorized disclosure of VMS data by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

The DA-BFAR shall take such measures as may be necessary to protect sensitive technical information, when disclosure of such information will injure the competitiveness or viability of domestic fisheries.

To emphasize, these penal sanctions, together with other confidentiality features of VMS, are all safeguards that work collectively against the unauthorized disclosure of VMS data. They do not nullify or violate trade secret confidentiality in any way. BFAR, as a government regulatory agency, is not a competitor of any commercial fishing companies, including respondents. In fact, the BFAR is mandated to actively prevent unauthorized

disclosures of VMS data. Further, the data obtained by the VMS will not only be encrypted, but may also be accessed only by the relevant regulatory agencies.[89] Therefore, respondents' fears that their economic interests will be vulnerable due to the installation of VMS is without merit.

I further disagree that regulatory disclosure is harmful to respondents' commercial interests.[90] Regulators are not competitors. They hold no interest in the specific processes, techniques, or activities that supposedly grant fishing companies legitimate competitive advantages. Further, the Fisheries Code and FAO No. 266 impose multiple safety measures, and even penal sanctions, to ensure that no private individual or private company will be able to acquire these data.

The foregoing discussions show that the VMS requirement is not unreasonably intrusive. Fishing vessels are already required to manually report the required information and submit the same to the BFAR Regional Office.[91] While the reporting method is different, the data to be collected is exactly the same. There is also no added threat of disclosure of the information to third-parties, as the law provides strict confidentiality measures. Hence, the data and information surrounding these activities should not be concealed from the regulators determining whether these activities amount to IUUF.

Clearly, there is no reason to prioritize a private entity's empty and unsubstantiated claims that their economic rights might be disclosed, over and above the pressing and overriding interest to protect our marine ecosystems and resources. Upholding FAO No. 266 achieves more than merely preventing IUUF, it also ensures the sustainability of our waters, extends the survival of our food supply, and protects our fisherfolk's livelihood for years to come.

IV (C)

I acknowledge that commercial fishing vessels, including those of respondents, possess certain economic rights by virtue of their licensed business operations. Regardless, even assuming that the fishing data collected by the VMS qualifies as trade secrets, FAO No. 266 is a valid exercise of the State's police power. Economic and private property rights are necessarily subordinate to regulations for the public welfare and common good. Since fisheries resources are commonly shared by all, public interest in the regulation of such resources must prevail over private interests.

I agree with the majority's application of the rational basis test, as this case involves the protection of only economic rights vis-à-vis the government's exercise of its police power.[92] Under the rational basis test, laws or ordinances are upheld once it is shown that there exists "a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it." [93]

The majority recognizes that FAO No. 266 advances legitimate government interests as it protects the constitutional right to a balanced and healthful ecology.[94]

The whereas clauses of FAO No. 266 lay down several legitimate and vital governmental interests that take precedence over private rights.[95] As the steward of Philippine resources, the government is constitutionally duty-bound to ensure that the Philippine resources are wisely and sustainably utilized, which includes the elimination of IUUF activities. This duty is consistent with the country's commitments as signatories to various treaties. Therefore, it is undisputed that this case meets the first prong of the rational basis test.

However, the majority ruled that the second prong is absent as the "24/7 monitoring of the location of a licensed fishing vessel, as well the round-the-clock reporting, being required under FAO No. 266 lack[s] a reasonable connection with the legitimate interest invoked by the Republic." [96] VMS is allegedly ineffective in detecting IUUF activities when conducted outside protected or restricted areas. Further, there is allegedly not much

difference between manual reporting and digital reporting, as the expected output is the same. Finally, the ponencia claimed that there are other mechanisms that can be utilized that are less intrusive and more effective than the real-time tracking conducted by VMS.[97]

Unfortunately, I do not subscribe to this analysis. VMS is an internationally recognized method for pursuing the legitimate government interest of curbing IUUF.

VMS is globally-recognized as an efficient means of ensuring the protection of marine species and waters. A report published by the Food and Agriculture Organization of the United Nations examined the objectives, functions, and potential of VMS for fisheries management. It proposed that an interoperable VMS implemented on an international scale may resolve the threat of global fish stock collapse:

The fact that so many world fisheries are currently in a threatened state is the result of that well documented phenomenon of overfishing. This is caused by the increasing capacity to find and to catch fish stocks which, even under good management are subject to changes in abundance caused by environmental factors. The principal tools at the service of fisheries managers in their efforts to counter overfishing and to protect the stocks are the use of quotas and limitations on fishing effort. While such weapons are theoretically potent, the problem is that no matter how diligent and able the management is in imposing limitations on catch and effort, resources for enforcing those limitations, measured in assets such as personnel, patrol vessels and patrol aircraft, are inadequate.

There seems to be a consensus that Vessel Monitoring Systems (VMS) is one of the keys to redressing this situation. When fisheries managers have timely and accurate knowledge of the movements of fishing vessels, their material resources are in effect increased by the corresponding improvement in the efficiency of their operations. Although VMS schemes established on national and regional levels are admirable initiatives, it must be recognized that, due to the increasing mobility of the world's fishing fleets, the problem is global.

There exists a desire amongst the world's fisheries managers to co-ordinate their efforts so that the world's fish stocks -- which recognize no national or regional boundaries -- can be saved. In order to do so, there will have to be agreement on the methods for implementing VMS on a very detailed level. Only when, for example, a fisheries manager in South America agrees with a fisheries manager in Europe on VMS performance, security and data formats, will a vessel be able to operate under the management of both, moving from one fishery to another both legally and with maximum transparency. Furthermore, only within such a context can the two fisheries managers share data on vessel movements and activities, in order to improve operations on an international scale.[98] (Emphasis supplied)

I have identified four main points that capture the value behind the VMS requirement and how it advances an important governmental interest.

First, VMS provides a way to verify whether a catch was obtained through IUUF. In a study titled, "Illegal, Unreported, and Unregulated Fishing: Is International Cooperation Contagious?," Kevin W. Riddle from the United States Office of Marine Conservation determined that the real-time information gathered by VMS is one of the best ways to ensure that a vessel's catch was not harvested through IUUF. "Requiring vessels to provide a copy of their VMS records, along with their catch documents, would allow port officials to verify that the catch was harvested where documented. This proof of documentation should be verified before the catch is released by the port state's customs." [99] By being tracked, vessels can prove that their catch was legal and should not be subject to any trade restrictions.

Second, the real-time tracking of vessels aids in the legal enforcement of fishing laws, rules, and regulations. If a fishing vessel enters a restricted area, the, regulators and appropriate authorities will be notified. This is consistent with former Solicitor General Menardo Guevarra's (Solicitor General Guevarra) statement that a vessel which

traverses a restricted zone would set off an alarm.[100] The early detection of these violations will not only increase the chance that violators will be caught red-handed, but will also assist in the collection of evidence to ensure the complete prosecution of these crimes. This was also elaborated in a 2012 study titled, "Comparing Interactive and Automated Mapping Systems for Supporting Fisheries Enforcement Activities - A Case Study on Vessel Monitoring Systems (VMS):"

These VMS positions feed in near real-time to a centralized database, which fisheries enforcement officers can use to detect abnormal or potentially illegal activity. Such activities can range from fishing in an area closed to specific fishing activities, fishing after the closure of a given fishery, fishing for a species other than the one authorized by the license, or illicitly transferring fish from one vessel to another. Enforcement officers can then collect evidence to determine whether it is warranted to investigate further the individuals connected to these activities once they return to port. The timeliness of such investigations can have a significant impact on their success, as well as on the ability to deter others from engaging in the same types of activities.[101]

The paper "Opportunities and Challenges for Improving Fisheries Management Through Greater Transparency in Vessel Tracking"[102] states the importance of information transparency in establishing an effective and legitimate fisheries monitoring and regulatory system:

Access to accurate and high-quality data is often presumed to be fundamental to establishing effective management. Well-managed fisheries guided by formal stock assessments are in better condition than poorly managed fisheries lacking comprehensive assessments. Transparency is generally presumed to improve the quality of decision-making by providing relevant and reliable information to decision-makers. Near-real time vessel tracking provides management agencies with accurate information on fishing activity that may be used in several ways, including estimating fishing effort, assessing spatial and/or temporal changes in fishing activity, improving fishery-dependent stock assessment indices, and supporting more effective regulatory design.

....

Fisheries monitoring programmes often have multiple goals, including monitoring for compliance with catch and effort regulations, size limits, gear restrictions, spatial and temporal closures, and/or transshipment regulations. Increasing transparency through vessel tracking provides management bodies with a way to address some, but not all, of these objectives. Because vessel tracking enables managers to observe historical and real-time vessel positions at sea, they can use these data to design and enforce spatial and temporal restrictions and identify patterns of transshipment. Effective enforcement is one of the most important factors for building legitimacy in management systems. The ability to detect and prosecute noncompliance shows well-intentioned actors that activities are being prosecuted and managed fairly, building confidence in the validity of the system. Detection of noncompliance is a necessary first step to enforcement, and the ability to effectively monitor offshore fishing activity has long been a key challenge in fisheries management. The availability of better information on vessel positions can reduce uncertainty around where vessels are and improve the models used to infer where fishing activity occurs. In turn, improvements in the spatial and temporal estimates of fishing activity may lower the costs of monitoring and enforcement relative to standard approaches such as surveillance planes and patrol vessels. With better information, agencies can improve the allocation of limited enforcement resources and prioritize inspection of high-risk vessels, areas, and seasons, thereby improving their ability to enforce the rules. Stricter enforcement of regulations raises the probability that violators will be detected, increasing the expected cost of illegal behaviour and incentivizing compliance with regulations. Though vessel tracking may support other goals like catch monitoring if paired with additional data streams, alone these technologies do not provide data on which species are being caught or how much.[103] (Citations omitted)

Third, the data gathered by VMS provides a wealth of information that goes beyond collecting a vessel's real-time

location. Real-time tracking is merely the initial step that our country must take to formulate a complete and responsive set of rules and regulations to protect our waters. As such, the third benefit of the VMS requirement is that legislators and government agencies can use the data collected by VMS to craft more responsive and effective laws, rules, and regulations to protect our waters and improve the overall fishing industry.

In a paper titled, "Vessel Monitoring Systems (VMS) Reveal an Increase in Fishing Efficiency Following Regulatory Changes in a Demersal Longline Fishery,"[104] VMS was shown to provide useful data in evaluating fisheries management strategies, modeling fisher behavior in relation to such policies, improving indices for assessing fisheries stock status, and understanding the various socioeconomic indicators relevant to fisheries sustainability:

Vessel monitoring systems (VMS) have improved our ability to monitor fishing vessel movements and to evaluate fishing fleet behavior (e.g., fishing location) and spatially-explicit economic decision-making (e.g., Watson and Haynie, 2018). VMS transmit vessel locations at regular intervals, and are required by dozens of national governments and regional fisheries management organizations. These systems facilitate monitoring of speeds, changes in bearing, locations, and other aspects of vessel behavior that can indicate when and where vessels are fishing.

VMS have been used to examine spatial fishing activities at higher temporal resolutions, leading to more precise estimates of effort (e.g., Mills et al., 2007; Peel and Good, 2011; Joo et al., 2013), validation of fisher-reported logbooks (e.g., Palmer and Wigley, 2009; Bastardie et al., 2010), delineation of fishing grounds (e.g., Stelzenmuller et al., 2008), assessment of benthic impacts from fishing (e.g., Lambert et al., 2011), and more. Some software packages now simplify and automate standard VMS analyses (Russo et al., 2014, or Hintzen et al., 2012), but specific case studies often still require customized modeling approaches. For example, Ducharme-Barth and Ahrens (2017) developed random forest algorithms with VMS data to assess changes in fishing effort as a result of closures associated with the Deepwater Horizon Oil Spill. O'Farrell et al. (2017) examined solutions for identifying fishing behavior when fishing events occurred over time intervals that were less than the VMS sampling frequency. Thus, while software can be used to automate some tasks, more general analytical approaches and metrics must be developed to address individual cases. As environments change and regulatory strategies shift, the ability to monitor impacts on fishers using VMS data will become increasingly important (Melnychuk et al., 2012; Clay et al., 2014).[105] (Emphasis supplied)

The paper "Strengthening Illegal Fishing Monitoring through the Implementation of Vessel Monitoring System"[106] also confirms that the information provided by the VMS is crucial not only for the detection and prevention of IUUF, but also for effective policy-making geared towards the conservation of marine resources:

This increase in the number of vessels emphasizes the importance of using Vessel Monitoring System (VMS) for monitoring and surveillance of fishing vessel activities. With the increase in the number of vessels, VMS becomes an important tool to detect and prevent illegal fishing practices, monitor vessel movements in real-time, and ensure vessels are operating in accordance with applicable regulations. VMS implementation helps fisheries authorities identify violations in restricted zones, detect illegal fishing activities, and support more effective fisheries policy-making. With VMS in place, authorities can quickly respond to violations and ensure the sustainability of marine resources.

Research conducted by Li et al. (2021) in the South China Sea found that VMS is effective in reducing illegal fishing by monitoring vessel movement patterns and fishing activities using satellite data. The use of VMS allows the identification of areas experiencing overfishing and the taking of fish stock protection measures. VMS data is used to classify vessel activities and detect non-compliance with fisheries regulations, indicating the presence of IUU fishing activities (Utama et al., 2021). In addition, VMS supports zone-based fisheries management and seascape-scale conservation, enabling identification of overfished areas and protection of important habitats. With VMS data analysis, spatially and temporally explicit patterns of fishing activity can be

identified, contributing to sustainable ecosystem management (Sales Henriques et al., 2023).

Real-time monitoring by VMS enables rapid response to illegal fishing and supports inter-agency coordination in law enforcement. Information from VMS also supports more effective policy-making and planning of marine resource conservation strategies (Marzuki et al., 2018). Thus, VMS is an important tool that provides valuable insights into fishing activities and enables faster and more effective prevention and response to illegal fishing. The integration of geospatial technologies and multilateral cooperation can strengthen efforts to conserve and sustainably manage marine resources. International co-operation, strengthened regulations, and the use of advanced technologies such as VMS and surveillance satellites are essential in a comprehensive strategy to tackle illegal fishing (Witt & Godley, 2007; Fisabilillah et al., 2023; Jones et al., 2023).[107]

Fourth, the Philippines is a signatory to multiple treaties which require the installation of management measures, including the VMS, onboard fishing vessels. Therefore, requiring our vessels to install VMS is an important State obligation.

The International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing published by the Food and Agriculture Organization of the United Nations identifies key deliverables that must be implemented by all fishing vessels to curb IUUF, regardless of the species of fish caught. As a signatory state, the Philippines is required to "undertake comprehensive and effective monitoring, control and surveillance of fishing from its commencement, through the point of landing, to final destination[.]"[108] Among the required mechanisms for this is the installation of "vessel monitoring system, in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS on board." [109] A signatory state's failure to comply with these obligations may subject it to trade-related measures, such as import and export controls and prohibitions.[110]

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean mandates that all fishing vessels involved in catching highly migratory fish stocks on the high seas must "use near real-time satellite position-fixing transmitters while in such areas." [111] Further, "[e]ach member of the Commission shall require its fishing vessels that fish in the Convention Area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures to be determined by the coastal State." [112]

The United Nations Fish Stocks Agreement, on the other hand, obligates signatory states to implement measures over vessels flying its flag, which includes requiring the "recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data" [113] and the "monitoring, control and surveillance of such vessels, their fishing operations and related activities... [through] the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned." [114] Annex I: Standard Requirements for the Collection and Sharing of Data of this Agreement requires "[s]tates or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as. . . position verification through vessel monitoring systems." [115]

Thus, the Philippines is internationally duty-bound to not only require the installation of VMS on vessels flying its flag, but to also ensure that vessels travelling within its jurisdiction comply with this requirement.

A review of regional compliance with VMS requirements further illustrates the reasonable connection between VMS and its goal of curbing IUUF. Many of our ASEAN neighbors have already implemented VMS in various forms, which similarly complies with international treaties.[116]

Thailand imposes its 24/7 vessel monitoring system upon all vessels of 30 gross tons or greater, in coordination with fisheries patrols to prevent IUUF.[117] A paper titled, "Using Vessel Surveillance Data to Estimate Spatio-Temporal Patterns in Short Mackerel Purse-Seine Fishery: Implication for Time-Area Closure Management in Thai Waters" described the nature of Thailand's VMS and assessed the distinct benefits of using the data gathered from it to inform fisheries management policies:[118]

Collating data on fishing activity is invaluable for fisheries management, such as for identifying fishing locations, improving stock assessments, estimating fishing effort, and evaluating the impacts of exclusion measures. The main data sources for estimating the spatial and temporal distributions of exploited fish stocks are scientific surveys and commercial fishing operations. However, since scientific surveys are typically conducted only once a year, their coverage is insufficient to capture seasonal trends. In contrast, although commercial fishing data may lack the geographic and temporal resolution of scientific data, commercial fishing records can reveal broad spatial and seasonal patterns.

"A vessel monitoring system (VMS) is a tracking device installed on each fishing vessel that consistently transmits data on the vessel's position, speed, and heading to land-control stations via satellite transmission. This information provides important spatiotemporal datasets that are useful for fisheries scientists to evaluate finer-scale spatial and temporal aspects of commercial fisheries. The high-resolution vessel position data received by VMS allows for studies of the distribution of fishing effort and species-specific catch per unit effort (CPUE) when integrated with commercial logbook data. The VMS can determine the fishing operation's position, while the fishing logbook records each vessel's daily catch. For each vessel and date, the VMS recordings correspond to fishing activity for each vessel on a given date, and the catches can be distributed across all fishing areas for each vessel on each day. This integration enables managers to monitor fishing efforts, detect changes in exploitation patterns, and gain insight into the spatial distribution of a stock. VMS data can also be used to identify fishing grounds and to quantify the impact of spatial management measures on the stock.[119] (Emphasis supplied, citations omitted)

Indonesia also implements its own VMS as part of its monitoring, control, and surveillance measures to prevent illegal, unreported, and unregulated fishing:

It is a form of surveillance system in the field of fishing and its transporting using satellite fishing vessel monitoring equipment and transmitter[s]. This system is placed on a fishing vessel to facilitate the supervision of its activities based on its position monitored at the Fishery Ship Monitoring Center in Jakarta. In addition, VMS also serves as an analysis material to obtain information on the speed and patterns of movement of the vessels and its previous near real time data recording.[120] (Citations omitted)

Under Indonesia's Ministry of Ocean and Fisheries Regulation No. 10 of 2019, only fishing vessels weighing over 30 gross tons were required to install VMS to secure a license with the Fisheries Management Area. This requirement was expanded in Ministry of Ocean and Fisheries Regulation No. 23 of 2021 to include all fishing vessels, including those of small-scale fisherfolk.[121]

Indonesia also integrates various databases into its VMS, such as fishing vessel registries, fishing license databases, fishing records, logbooks, and catch certificates, among others.[122] In 2017, Indonesia made its VMS database available to Global Fishing Watch, thus bolstering data transparency and availability relevant to developing international fisheries management policy to prevent IUUF.[123] The paper continues to describe the benefits of Indonesia's decision to share its database with non-government actors:

Prior to the collaboration with Indonesia, [Global Fishing Watch (GFW)] used AIS data to monitor the activities of the world's fishing vessels. By using machine learning and cloud computing, GFW analyzes the ship's movement patterns to identify and display commercial fishing activities. It also uses algorithms developed for AIS technology, to process and analyze data of Indonesia's VMS. Movement analysis of vessels

is displayed through the GFW public mapping platform, which then can be used for many purposes such as tracking ships, monitoring activities in marine protected Areas (MPAs), or transshipment activities. More importantly, GFW can disclose fishing activities closely related to IUUF and human rights abuses. For example, in 2016, with the aid of GFW, the Associated Press released a series of articles on the prevalence of slavery in the Southeast Asian fisheries industries. This reportage helped to uncover the slavery practice in Benjin, Aru Islands of Maluku, where nearly 2,000 slaves were freed.

Furthermore, Indonesia's VMS data sharing has enabled GFW to produce further rich data for research purposes, of which one analysis was taken to assess the economic impact of Indonesia's efforts in combating IUUF. It found that Indonesia's new fishery policy has reduced total fishing effort by at least 25% and potentially resulted in a 14% increase in catch, and a 12% increase in earnings. Equally, it has led to a 30% reduction in the number of fishing vessels operating in Indonesia. In 2013, Indonesia was ranked 15th in the world for countries whose region of exclusive economic zone were most illegally entered by foreign vessels. The ranking [has since gone down] to 85th by 2016. The analysis of AIS data from GFW also shows a decrease of 90% of ship operating hours in Indonesia, most of which were from China, Thailand, Taiwan and South Korea.[124] (Citations omitted)

Thus, by implementing a robust system for monitoring, control, and surveillance of its marine areas and resources, Indonesia has succeeded in pursuing sustainable global fisheries management policies and programs, and even leveraged its VMS to enforce human rights in the region.

Vietnam has also implemented its own VMS program and shows a similar impetus of doing so after being issued a yellow card by the European Union.[125] Further, recent data shows that 97.65% of Vietnamese fishing boats at least 15 metres long are equipped with VMS, while the rest are under supervision.[126]

After pilot testing its VMS in Khanh Hoa, Vietnam, a study observed notable benefits in the system's ability to provide fishing regulatory agencies with insights on the effectiveness of provincial fisheries management programs, the concentration of fishing activity within the province and its surrounding areas, and the status of the fisheries industry within the region.[127]

In Malaysia, offshore fishing vessels, including foreign-owned vessels under charter to its nationals, must be fitted with automatic location communications, such as VMS, for the transmission of locational data.[128]

Cambodia does not presently require fishing vessels to install VMS, but its government has collaborated with the United Nations' Food and Agriculture Organization to roll out 1,600 VMS for installation on medium- and large-scale marine fishing vessels.[129] Looking more broadly, both South Korea[130] and Taiwan[131] also require its distance water fishing vessels to be equipped with both VMS and an electronic logbook.

China, as one of the most aggressive countries fishing and operating sea vessels in the West Philippine Sea, also recognizes the value of VMS in curbing IUUF. Their VMS is "based on the BeiDou satellite navigation system and is used to record important information, such as latitude, longitude, date, speed, heading, BeiDou ID, etc., and it is a powerful tool to ensure the safety of fishing vessel navigation at sea and the stability of operation." [132]

As early as 2011, China required all distance monitoring vessels to install VMS and it must be in continuous operation while the vessel is at sea to ensure that the government can monitor the data sent by the system.[133]

In 2014, China implemented its Measures for Monitoring and Management of Pelagic Fishing Vessels, which required subject vessels to automatically report their position through VMS at least six times a day, once every four hours. The tampering, moving, or closing of the VMS, or the false reporting of information would cause the deduction of subsidies.[134]

Due to overfishing and pollution of their waters, China implemented the 2020 Rules on the Management of

Distance Water Fishing. Central to this framework is the requirement that distance water fishing vessels install VMS so that its government can supervise their overall conduct, including the identification of their location and monitoring of their catches. The location information of these vessels are automatically reported every hour.[135]

All of the foregoing establish a reasonable connection between the legitimate government interest and the means employed to achieve it, i.e., requiring VMS. However, the second component of the rational basis test—the reasonableness of the means adopted—should not be assessed in the abstract or reduced to mere logical coherence. It must be evaluated in light of the concrete realities confronting the State.

In the Philippines, the depletion of marine resources is not a theoretical concern but an alarming and empirically documented crisis. Studies consistently show that many of the country's fishing grounds are already overfished, with stocks declining at a rate that threatens long-term ecological balance and national food security.[136] Adding to this strain is the persistent prevalence of IUUF, which accelerates resource depletion and weakens enforcement regimes. These challenges are further compounded by the vastness of Philippine waters, the limited capacity of enforcement agencies, and the sophistication of IUUF activities, which often evade traditional monitoring methods.

In this context, the State must be afforded sufficient leeway to impose regulatory measures that enable it to monitor fishing activities effectively and curb IUUF. The VMS requirement is a calibrated response to these pressing conditions that is neither excessive nor arbitrary, but practical, necessary, and reasonable to address pervasive enforcement challenges and ensure sustainable use of marine resources. As stated above, FAO No. 266 does not impose an unreasonably intrusive or burdensome disclosure requirement, it merely requires the recording and transmittal of the same data collected from earlier manual reporting methods. VMS merely records and transmits this data electronically to ensure its efficiency and accuracy.

The non-intrusiveness of the VMS requirement is further bolstered by the Manifestation dated August 29, 2024, where the Republic informed the Court that at least 90.4% of the targeted fishing vessels have already complied with the VMS installation. This demonstrates that the overwhelming majority of our commercial fishing vessels (1) acknowledge that the data collected and reported by the VMS via the ERS are not trade secrets; (2) submit to the regulatory authority of the BFAR; (3) recognize that the VMS requirement is not unduly burdensome; and (4) submit to the regulatory authority of foreign jurisdictions where VMS is a requirement for them to fish.

Therefore, the reasonableness of the means employed by FAO No. 266 meets the rational basis test, not only in a logical sense but also in a contextual and exigent sense, aligned with the urgent need to protect the country's threatened fisheries.

IV (D)

VMS is necessary to regulate fisheries effectively, and invalidating FAO No. 266 exposes our regulatory landscape for fisheries to several issues. Not only would the absence of a VMS requirement diminish our marine resource management capabilities, but it would also have the unintended effect of incentivizing overfishing and IUUF within our waters. Overfishing and other incidents of IUUF thrive under inadequate regulations. I submit that declaring FAO No. 266 unconstitutional creates several regulatory gaps, which may allow these harmful activities to persist, while also significantly deterring both domestic and regional efforts to prevent and address their prevalence.

FAO No. 260, the precursor of FAO No. 266, required all licensed Philippine-flagged fishing vessels targeting straddling and highly migratory fish stocks both within and outside of the Philippine waters to install and comply with the VMS requirement.[137] Thus, a Philippine-flagged commercial fishing vessel that intends to engage in

fishing activities targeting straddling and highly migratory fish stocks outside Philippine waters, such as in neighboring countries including Malaysia, Indonesia, and Vietnam, is required to install and comply with the VMS requirement that would allow foreign regulators to monitor their activities.

Concurrently, FAO No. 266 further implemented FAO No. 260 by broadening its coverage and requiring all commercial catcher fishing vessels operating in Philippine waters, regardless of flag or type of catch, to install and comply with VMS.[138] Thus, FAO No. 266 filled the gaps in FAO No. 260's VMS coverage by requiring compliance from all vessels that FAO No. 260 left for future implementation.

Unfortunately, the majority declared the entirety of FAO No. 266 unconstitutional. As a result, there is currently no subsisting Philippine law or regulation that obligates a Philippine or a foreign-flagged commercial vessel to maintain an active VMS while operating within Philippine waters. This creates a significant regulatory gap where foreign fishing vessels may be incentivized to overfish in Philippine waters.

To illustrate how this gap may favor foreign vessels, if a Philippine-flagged commercial fishing vessel wishes to fish within Philippine waters, regardless of catch, it is still required by FAO No. 198-1 series of 2018 to manually report its daily record offish catch and relevant data. However, no such regulation exists for foreign-flagged vessels in Philippine waters. Foreign-flagged vessels fall outside the coverage of FAO No. 198-1 series of 2018, since they do not land their catch in Philippine ports and may merely fish within Philippine waters and land their catch elsewhere. In fact, catch transshipment while at sea is a prevalent example of IUUF, which allows vessels to bypass landing controls and regulations entirely or allow fishers to "mix illegally caught fish with legal catches." [139] Thus, by invalidating FAO No. 266, which expressly applies to all commercial catcher fishing vessels operating in Philippine waters, the majority effectively removes the only remaining regulatory mechanism that governs such vessels.

Advances in VMS technology have developed features capable of detecting IUUF activities, such as transshipment and overfishing, by analyzing vessel positioning and spatiotemporal data of vessel interactions and activities at sea.[140] In the absence of a VMS requirement of our own, our regulators would have no access to such data and opportunities for regulatory enforcement would remain out of reach.

In this regulatory vacuum, a commercial fishing vessel, regardless of flag, that is required by its flag State or by other jurisdictions to carry a VMS, would be legally permitted to switch off its VMS upon entering Philippine waters. Although Philippine authorities may still detect foreign vessel presence through other surveillance mechanisms employed by the National Maritime Center, such detection would be limited. Absent a binding VMS requirement, our regulatory bodies will remain blind to the vessel's fishing data and activities, such as real-time position, speed, and course, enabling them to evade detection for IUUF and to overfish in our own waters.

Further, invalidating FAO No. 266 halts VMS implementation and may result in its undoing. This deters both local and regional authorities from effectively and efficiently monitoring fishing activities, collecting accurate and timely catch and effort data, enforcing conservation and management measures, and holding erring vessels accountable.

VMS data, which includes, but is not limited to, vessel location, speed, heading, and relevant catch information, has proven useful in developing domestic resource management policies, aiding in law enforcement, and even in optimizing regional fisheries management initiatives by sharing VMS data across State participants.[141]

Various regional agreements and organizations have laid down uniform standards and interoperable regulatory systems for its various member States. Given the extent of monitoring required to combat IUUF, among other maritime violations, VMS's functionalities and plans for interoperability and data sharing is widely deemed an

effective step toward sustainable resource management, as found by the cited studies. According to a report by the United Nations Food and Agriculture Organization, several regional fisheries management organizations have already formalized regional data sharing agreements for VMS data.[142]

Consistent with its participation in the Regional Plan of Action to Combat Illegal, Unreported and Unregulated Fishing, the Philippines has also been developing its own framework for VMS data sharing as of 2024.[143] However, these efforts may result in little to no cooperation from co-participants in the relevant regions without a regionally-compliant VMS requirement. Taken to its logical conclusion, the absence of VMS leaves the Philippines without systems for fisheries data sharing and effectively places foreign vessel data from its regional counterparts out of reach. This leaves Philippine regulators blind to foreign vessel activity and opens Philippine waters to foreign actors who, as of FAO No. 266's invalidation, are unburdened by any local regulations. Considering the foregoing, the invalidation of PAO No. 266 poses significant risks to the sustainability of the Philippine fishing industry.

As discussed above, the invalidation of FAO No. 266 deters both local authorities and regional initiatives from effectively and efficiently regulating fisheries. Even worse, the absence of a VMS requirement forces a reversion to manual reporting of fisheries data, which has been shown to be inaccurate and prone to tampering.

The majority disagrees with this argument, stating that "VMS is not effective in detecting IUUF violations other than fishing within a protected or restricted area. Equally established is that the expected output from VMS 'is no different from the present manual reporting' already being done by the fishing vessels." [144]

However, the following exchanges between Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) and Solicitor General Guevarra, as well as Associate Justice Alfredo Benjamin S. Caguioa and Atty. Arnold D. Naval, respondents' counsel, during their interpellations,[145] are not consistent with this conclusion:

Chief Justice Gesmundo

Can the VCM determine that that gadget [sic], the fishing vessel fished at a regulated area?

Solicitor General Guevarra

Yes, Your Honor, that can be detected because it would set an alarm if a certain vessel would be traversing a restricted zone.

Chief Justice Gesmundo

Can the VMS determine overfishing?

Solicitor General Guevarra

The matter of overfishing is the subject of studies based on the data collected through the VMS.

Chief Justice Gesmundo

But the gadget cannot detect overfishing.

Solicitor General Guevarra

Definitely not, Your Honor.

Chief Justice Gesmundo

It cannot.

Solicitor General Guevarra

It's just the catch for that particular day. But the whole thing aggregated together. . .

Chief Justice Gesmundo

So, the output desired from the use of VMS is no different from the present manual reporting being done by these fishing vessels?

Solicitor General Guevarra

In a sense, yes. But it's real time, it's digitized, it's less prone to human manipulation, and for quick enforcement.

Chief Justice Gesmundo

But do you know the reported data is based on the reporting of the human factor, right?

Solicitor General Guevarra

Yes, Your Honor.

Chief Justice Gesmundo

The one encoding. How reliable is the effectiveness of this gadget, the VMS?

Solicitor General Guevarra

That is very true, Your Honor, because if there is an intent really to transmit fraudulent or incorrect data, that is still possible.[146]

. . . .

Justice Caguioa

Okay, Counsel, not that I'm telling you to do this, but is it possible for a fishing operator to stay in one place, fish there, go to another place, and that's the only time he inputs the information of what fish he caught in another place? is that possible?

Atty. Naval

If that will not [sic] Your Honor, there is a requirement in FAO [No.] 266 that, in a day, they should at least report one catch per day. So, they are required to report within 24 hours.

Justice Caguioa

Correct. So, in my scenario, where I go to my fishing ground here kasi as you said Malaki 'yung dagat e, noh? [M]alaki rin iyong fishing ground ninyo. So, I go to one part of the fishing ground, I do my catching of fish there, I go to another part of the fishing ground and that's where I input the information in the ERS. Pwede kong gawin iyon[,] 'di ba?

Atty. Naval

May, Your Honor.

Justice Caguioa

And that information is not inaccurate [sic]. It is the same amount of fish.

Atty. Naval

Yes, Your Honor.

Justice Caguioa

Correct?

Atty. Naval

They can verify, Your Honor.

Justice Caguioa

It will just be inaccurate on where it is as to the location.

Atty. Naval

As to the location, Your Honor.[147]

Solicitor General Guevarra highlights that the digitization through vessel monitoring is "less prone to human manipulation"[148] and aids in quick and effective law enforcement. On the other hand, Justice Caguioa illustrates a scenario that shows precisely why manual reporting should be dispensed with. Not only is manual reporting prone to inaccuracies due to human error, Atty. Naval's responses further confirm that manual reporting leaves room for fishers to deliberately upload or report incorrect data. As he further testified:

Justice Caguioa

Therefore, it seems to me, that the ERS is forcing you to lie to protect your trade secret? Tama ba ako?

Atty. Naval

Yes, Your Honor.

Justice Caguioa

And that's why you filed this suit because . . . (interrupted)

Atty. Naval

We don't want to lie.[149]

Electronic monitoring systems, such as VMS, have been shown to restrict the opportunity for individuals to tamper with the transmitted information given its automated and near real-time reporting.[150] Manual reporting requires fishers to voluntarily input their location at certain intervals. However, as indicated in the interpellation of respondents' counsel,[151] this manually reported information is unreliable. Manual reporting limits location data not only to specific points of a vessel's path, but also relies on the fishers' propensity for honesty.

On the other hand, VMS tracks a vessel's entire journey from start to finish, with information on speed, heading, and trip duration. This information is transmitted to fisheries monitoring centers automatically and at set intervals.[152] The importance of this VMS feature should not be understated as it gives an accurate and reliable account of a vessel's fishing activities. As this date will be crucial in the drafting of fisheries laws, regulations, and policies, the ability of our government to rely on such data must be safeguarded.

As discussed above, many of our neighboring countries require the installation of VMS onboard certain fishing vessels. Vessels from these countries give this requirement primacy, as non-compliance therewith results in the imposition of fines and penalties. A summary of these is indicated below:

Country

VMS requirement

Effect of non-compliance

Cambodia

Voluntary; Government collaborated with UN's Food and Agriculture Organization to roll out 1,600 VMS for installation on medium- and large-scale marine fishing vessels[153]

Termination of registration and revocation of license for vessels found violating laws against IUUF.[154]

China

Distance water fishing vessels are required to have VMS, which automatically reports location information every hour.[155]

Suspension or cancellation of fishing license, consistent with Chinese measures to implement the Inter-American Tropical Tuna Convention's Resolution No. C-24-01.[156]

China also penalizes violators of its Amended Maritime Traffic Safety Law by imposing a range of fines on owners/operators, ship masters and other relevant liable personnel. In serious circumstances, the vessel master and crew may be suspended, have their registration certificates and documents revoked, or have their vessel confiscated.[157]

Indonesia

Initially, only fishing vessels above 30 GT were required to have VMS. Under a 2021 regulation, all fishing vessels, including those of small-scale fishermen, must have VMS installed.[158] Its VMS database is available to Global Fishing Watch.[159]

IUU Fishing, which includes non-compliance with VMS requirements, is considered a criminal offense in Indonesia. In addition to imprisonment, violators may be subject to administrative fines and the possible suspension or revocation of licenses, authorizations, or port clearances.[160]

Malaysia

Offshore fishing vessels, which are mostly trawlers and purse seiners over 70 GT, including foreign-owned vessels under charter to Malaysians, must be fitted with automatic location communicators, which will transmit locational data. VMS is among the systems to be installed.[161]

Malaysia imposes imprisonment in default of fines, and the possible forfeiture of vessel, equipment and catch/proceeds for foreign vessels violating its fisheries laws.[162]

Taiwan

Distance water fishing vessels are required to install VMS and electronic logbook.[163]

Taiwanese laws punish violations of its conservation and management measures, which include the proper installation and operation of vessel monitoring systems with a fine, or the suspension or revocation of their fishing license, crew identification, or vessel fishing certificate.[164]

Thailand

Vessels above 30 GT are required to have VMS, which functions at all times.[165]

A report on developments in Thailand's fisheries laws penalizing IUU Fishing notes that Thai laws impose imprisonment and fines against violators.[166]

Thai laws also impose administrative sanctions such as fines, license suspension/revocation.[167]

Vietnam

97.65% of fishing boats at least 15 meters long have VMS installed.[168]

Vietnamese Decree 38/2024/ND-CP imposes administrative sanctions on fisheries violations, which include

non-compliance with VMS requirements. These penalties contemplate a vessel's failure to maintain its transmission of required information to Vietnam's VMS, knowingly disabling the required transmission devices, or failing to install such devices, as required by law.[169]

Non-compliance with VMS requirements may also be subject to criminal sanctions under the 2017 Law on Fisheries[170] and Resolution 04/2024/NQ-HDTP.[171]

States vary in their respective resources and capacities for monitoring vessel activities within their relevant jurisdictions. This includes their respective abilities to detect vessels that do not comply with VMS requirements. Monitoring maritime activities is one of VMS's functions as part of a state's implementation of an effective marine resource management plan. Further, VMS's reporting obligation enables the coastal State to effectively monitor fishing activities within its waters, regulate the utilization of its marine resources, and impose appropriate sanctions in cases of non-compliance.

On this score, it is apt to point out that respondent RBL Fishing Corporation conducts fishing operations in Indonesia. As earlier discussed, Indonesia requires not only the installation of VMS on the fishing vessels, but publishes the data. During the oral arguments, respondent RBL Fishing Corporation confirmed that they comply with these requirements. Yet, in the Philippines, they seek to remove the VMS requirement despite the benefits gained in conservation management. The exchange is as follows:

Senior Associate Justice Leonen

Okay, and in fact, that [RBL Fishing Corporation has] been starting Tuna operations in Indonesia and Papua New Guinea as early as 1990. Is that correct?

Atty. Naval

That I'm aware, Your Honor.

Senior Associate Justice Leonen

Okay. In Indonesia, they require VMS.

Atty. Naval

Yes, Your Honor.

Senior Associate Justice Leonen

Exactly, the same?

Atty. Naval

Yes.

Senior Associate Justice Leonen

In fact, in Indonesia, not only do they require VMS, they publish publicly.

Atty. Naval

Yes, Your Honor.

Senior Associate Justice Leonen

The result of their VMS, insofar as the location is concerned.

Atty. Naval

Yes, Your Honor.

Senior Associate Justice Leonen

That's their call, correct?

Atty. Naval

Yes. Yes.

Senior Associate Justice Leonen

So, in Indonesia, is your client complying with VMS?

Atty. Naval

Yes, Your Honor, it's the requirement there, Your Honor.

Senior Associate Justice Leonen

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?

Atty. Naval

Because they have no choice there, Your Honor.

Senior Associate Justice Leonen

Yes, but you, you are to comply with VMS in other countries, but you want in the Philippines that the BFAR will be, well, not totally blind, but we'll have a disadvantage in terms of digitalization, automation, data analytics, compared with our neighboring countries. Correct? That would be the net result, correct?

Atty. Naval

Yes, Your Honor.

Senior Associate Justice Leonen

So, if the Supreme Court of the Republic of the Philippines would nullify our VMS, then we will be at a disadvantage compared with the other countries informing their fishers with respect to conservation management and even commercial fishing. That could be the net effect, correct?

Atty. Naval

It would appear to be, Your Honor.[172]

From the above interpellation, it is clear that respondents intend to comply, and have been complying with the fishing requirements of foreign countries. Respondents' fishing vessels already have VMS installed, and they have no issue with being monitored by a foreign government. The grant of their prayers will allow respondents' fishing vessels, conducting operations in foreign waters, to turn off their VMS upon reaching Philippine waters. Effectively, as admitted by respondents' counsel, other countries would benefit from the VMS data taken from Philippine fishing vessels, i.e., which waters are overfished, compliance with fishing regulations, spatial monitoring, and other vital information.

This is not only absurd, it is wholly unacceptable and should not be countenanced. Respondents cannot be allowed to stand as an exception to this widespread compliance of fishing regulations.

IV(E)

The State's duty of stewardship over the country's natural resources provides sufficient basis for upholding the regulations imposed by FAO No. 266. However, I maintain my reservations with using the Regalian Doctrine as basis. Consistent with my separate opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*,^[173] I submit that the Constitution provides for the State's duty to ensure responsible use of the country's natural resources without need to reference the Regalian Doctrine.

I reiterate my opinion that the regalian doctrine is not provided in our Constitution. The regalian doctrine provides that all lands not of private ownership belong to the State. However, Article XII, Section 2 of the 1987 Constitution states:

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 . . .

Since the 1987 Constitution limited the State's ownership to lands of public domain, not all lands are presumed public. They must be part of the public domain for the State to be deemed its owner.

Furthermore, contrary to the regalian doctrine, the due process clause in the Constitution protects all types of property, including those not covered by a paper title. This protection extends to those whose ownership resulted from possession and prescription, and to those who hold their properties in the concept of owner since time immemorial.

. . . .

The regalian doctrine emphasizes the State's ownership of all lands, irrespective of their ecology and the people who occupy them. The State acts as owner, exercising all rights of ownership over it, including the *jus possidendi* (right to possess), *jus utendi* (right to use), *jus fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose). Cariño clarified, however, that after the Spanish occupation, all properties and rights of the State are now "to be administered for the benefit of the inhabitants[.]"

This shift in perspective — from unquestionable State ownership to the consideration of the inhabitants' rights — is affirmed by the application of the public trust doctrine. Under the regalian doctrine, the natural resources simply belong to the State, no qualifications. Under the public trust doctrine, the State's resources exist and are tempered for the benefit of the community.^[174] (Emphasis supplied, citations omitted)

Instead, I submit that the issuance of FAO No. 266 is an exercise of the State's duty to act in the interest of its people in managing its natural resources, as embodied in Maynilad's public trust doctrine.

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm

Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. Thus, "[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust[.]"

....

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

These exigencies forced the public trust doctrine to evolve from a mere principle to a resource management term and tool flexible enough to adapt to changing social priorities and address the correlative and consequent dangers thereof. The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself.[175] (Emphasis supplied, citations omitted)

From the foregoing, my separate opinion in the same case offered a discussion of the constitutional basis referenced in the main opinion:

The concept of trust in a limited government is already real and implicit in the most fundamental concept articulated in Article II, Section 1 of the Constitution:

SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

In light of this principle, our Constitution expressly articulates in Article X, Section 1 of the Constitution that:

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

This provision echoes the fiduciary relation between the government and the sovereign. Public officials, as trustees, are expected to act with responsibility and accountability in favor of the beneficiary. As in this case, the beneficiary of this public trust are the people. The trustees are held to higher standards and are liable for violations of public trust. Their betrayal of public trust is even considered an impeachable offense, as provided in Article XI, Section 2 of the Constitution:

SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

While the State's relationship with its natural resources is not as expressly stated to be a public trust, it also flows from the fundamental nature of a constitutional republican state.

The constitutional provisions on national economy and patrimony, as found in Article XII of the 1987 Constitution, emphasizes that the State's power is always subject to the common good, public welfare, and public interest or benefit. Many of its provisions put primacy in favor of the State's citizens:

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

....

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

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

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 fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

....

SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

SECTION 4. The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

SECTION 6. The use of property bears a social junction, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

....

SECTION 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

....

SECTION 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law[.]

These constitutional provisions on the State's national patrimony and economy, on which the public trust doctrine is anchored, highlight that the common good, public interest, public welfare—the people—are of primary consideration.[176] (Emphasis supplied)

The constitutional provisions referenced in the foregoing discussion of the public trust doctrine emphasize the State's duty to recognize its peoples' dependence on a sustainable and resilient ecology. The State fulfills this duty by acknowledging a conception of property that is more equitable, just, and reasonable. Resources are finite and their utilization cannot be left unchecked given the realities of climate change, environmental degradation, and natural resource depletion. These problems require modern solutions for ensuring a sustainable future for all of our people. Thus, we must understand property and its concomitant rights as "part of a community and an ecosystem, interdependent with each other." [177]

Garrett Hardin discussed the problem inherent in allowing rational actors to freely use a shared resource, in what became popularly known in academic discourse as the "tragedy of the commons." In an article of the same title, Hardin postulated that unregulated public access to a common exhaustible resource will lead to its overuse and eventual depletion, to the ultimate detriment of all who relied on the shared resource.[178] He theorized that each rational actor will always use a shared resource to their respective maximum capacities, considering only their own losses, and without regard for the aggregated negative effects that their actions may have on all other users and on the shared resource's continued existence.

The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy.

As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?" This utility has one negative and one positive component.

1) The positive component is a function of the increment of one animal. Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly +1.

2) The negative component is a function of the additional overgrazing created by one more animal. Since,

however, the effects of overgrazing are shared by all the herdsmen, the negative utility for any particular decision-making herdsman is only a fraction of -1.

Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another . . . But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. 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 a commons brings ruin to all.[179] (Emphasis supplied)

Elinor Ostrom later re-examined the tragedy of the commons in her book entitled "Governing the Commons – The Evolution of Institutions for Collective Action." [180] Here, Ostrom traced the origin of the tragedy of the commons and reviewed the metaphorical models most often used to illustrate its effects. In doing so, she highlighted how cooperation and collective action may provide a viable alternative to the ever-increasing prevalence of privatization in the use of shared resources:

The tragedy of the commons, the prisoner's dilemma, and the logic of collective action are closely related concepts in the models that have defined the accepted way of viewing many problems that individuals face when attempting to achieve collective benefits. At the heart of each of these models is the free-rider problem. Whenever one person cannot be excluded from the benefits that others provide, each person is motivated not to contribute to the joint effort, but to free-ride on the efforts of others. If all participants choose to free-ride, the collective benefit will not be produced. The temptation to free-ride, however, may dominate the decision process, and, thus all will end up where no one wanted to be. Alternatively, some may provide while others free-ride, leading to less than the optimal level of provision of the collective benefit. These models are thus extremely useful for explaining how perfectly rational individuals can produce, under some circumstances, outcomes that are not "rational" when viewed from the perspective of all those involved.

What makes these models so interesting and so powerful is that they capture important aspects of many different problems that occur in diverse settings in all parts of the world. What makes these models so dangerous—when they are used metaphorically as the foundation for policy—is that the constraints that are assumed to be fixed for the purpose of analysis are taken on faith as being fixed in empirical settings, unless external authorities change them. The prisoners in the famous dilemma cannot change the constraints imposed on them by the district attorney; they are in jail. Not all users of natural resources are similarly incapable of changing their constraints. As long as individuals are viewed as prisoners, policy prescriptions will address this metaphor. I would rather address the question of how to enhance the capabilities of those involved to change the constraining rules of the game to lead to outcomes other than remorseless tragedies.[181]

Thus, she revisited Hardin's discussions and proposed that instead of coercive policies geared toward establishing stronger private-use rights in favor of specific users, regulations may benefit from referring to self-regulated common property systems which exhibit certain "design principles" for resilient common pool resource (CPR) regimes:

Table 3.1. Design principles illustrated by long-enduring CPR institutions

1. Clearly defined boundaries –

Individuals or households who have rights to withdraw resource units from the ICPR must be clearly defined, as must the boundaries of the CPR itself.

2. Congruence between appropriation and provision rules and local conditions –

Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provision rules requiring labor, material, and/or money.

3. Collective-choice arrangements –

Most individuals affected by the operational rules can participate in modifying the operational rules.

4. Monitoring –

Monitors, who actively audit CPR conditions and appropriator behavior, are accountable to the appropriators or are the appropriators.

5. Graduated sanctions –

Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of the offense) by other appropriators, by officials accountable to these appropriators, or by both.

6. Conflict-resolution mechanisms –

Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.

7. Minimal recognition of rights to organize –

The rights of appropriators to devise their own institutions are not challenged by external governmental authorities.

For CPRs that are parts of larger systems:

8. Nested enterprises –

Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises.[182]

Ostrom's book won the 2009 Nobel Memorial Prize in Economic Sciences for its contributions but admittedly remains part of the "still-evolving theory of collective action." [183] However, I maintain that FAO No. 266's VMS requirement contributes to the establishment of an effective common pool resource management regime because of its monitoring and data gathering capabilities. These functions are not only required under our domestic and international legal obligations but are also indispensable to an effective regulatory regime for commons such as fisheries and marine resources.

In the context of commercial fishing operations, there is no serious dispute that fishing vessels draw from a common pool resource—namely, the country's marine life. Like any business enterprise, commercial fishing is fundamentally profit-driven, with operators naturally seeking to maximize returns while minimizing costs. Absent meaningful regulation, this economic incentive encourages intensified extraction, larger hauls, and increased fishing effort, even when such practices imperil the long-term viability of the very resource on which the industry depends.

Left unchecked, short-term profitability comes at the expense of sustainability, transforming marine resources from a source of enduring economic value into a rapidly depleted asset. It is precisely this dynamic that justifies regulatory intervention—not as an impediment to legitimate business, but as a necessary measure to align commercial incentives with ecological preservation and the long-term survival of the industry itself.

I fully acknowledge that commercial fishing vessels play an indispensable role in bringing food to our tables and sustaining the nation's food supply. Yet this mutual benefit—food for the public and profit for the industry—cannot be framed solely through the lens of individual or short-term self-interest. The continued viability of both depends on a shared commitment to the long-term stewardship of marine resources.

As Ostrom observed, the sustainable management of common pool resources is best achieved through collective responsibility, self-regulation, and effective monitoring. It is in this context that the VMS requirement under FAO No. 1266 emerges not as a punitive imposition, but as a practical and forward-looking mechanism that promotes

accountability, aligns commercial incentives with sustainability, and safeguards the marine resources upon which both present commerce and future generations depend.

Thus, this Court cannot afford to ignore the dangers of unregulated access to the country's exhaustible marine resources. The natural replenishment of these resources cannot keep pace with their commercial usage. Accepting the current system as adequate for controlling the problem of IUUF ignores the burden shouldered by our already overexploited fisheries resources. Even worse, it leaves our regulatory agencies blind to possible solutions that may be gleaned from more efficient systems in an industry that is long overdue for regulatory improvements.

These concerns are not speculative. Studies made across decades of Philippine fisheries data consistently maintain that the country's waters are overfished. As early as 2014, a paper studying trends in Philippine capture fisheries observed that "catch rates have been declining at least since the 1970s[.]"[184] with additional indicators exhibiting the threat of a collapse of the country's available fish stocks.

Overall, catch rates have been declining at least since the 1970s. The relatively steeper decline in catches from "qualitative" estimate compared to "quantitative estimate ...could be attributed to some fishing adjustments by fishers to keep daily catches high even as the available fish stocks biomass continue to decline[.] Some of these fishing strategies include improving fishing technology, increasing fishing effort, expanding fishing grounds and changing or becoming less selective in target species.

According to key informants during FGDs, significant fishing technological improvement occurred during the early 1990s. Before [the] 1990s, the hook and lines used were predominantly simple handlines with less than 10 hooks. Longlines were generally equipped with only a few hundred hooks until the 1990s compared to the more than a thousand hooks that are commonly used for longlines today. For gill nets, the most commonly used design up to the 1990s were single-layered nets with length of tens up to few hundred meters only. The use of trammel nets (2-ply, 3-ply gill nets) and nets of more than a thousand meters long in small-scale fisheries was uncommon until the late 1990s.

Extended fishing time and expansion of fishing grounds are also strategies to adapt to the declining fish stocks. Fishing time up to the early 1980s normally lasted less than 4 h per trip compared to almost 10–14 h per trip for small-scale fisheries today. Spear fishers said that it was easy to catch 10 kg of "good class" fish such as big groupers and jacks back in the 1980s but it is almost impossible to catch the same today without using a compressor (i.e. compressor fishing or hookah) even if they fish the whole day. Moreover, fishers used to fish generally within a 1 km radius from where they lived, but now they have to go to the few remaining and relatively less exploited but farther fishing grounds.

Fishers have also become less selective in the fish they are catching. Although fishers said that the dominant species are the same, these have been significantly reduced so they are now also targeting previously disregarded fish like the less palatable, low-valued and small species of wrasse, damselfish and pufferfish. The steadily declining catches, despite the considerable improvement in fishing technology and increased in fishing effort over the last two to three decades is indicative of both biological and economic overfishing that could threaten the fishery with collapse in the near future... In late 1980s to 1990s, there may have still been enough stock to compensate for the increasing fishing costs. However, improving fishing technology further is no longer cost-effective, nowadays, as there are no longer enough fish.[185] (Citations omitted, emphasis supplied)

It is the judiciary's responsibility to allow for legal interpretations that address its society's evolving needs, as driven by new and emerging problems. One of these problems is the weakening of regulatory regimes over common resources in the pursuit of private use and profit. Katharina Pistor's book, "The Code of Capital,"[186] discusses how modern economies have created and perpetuated wealth for those who were best able to use the law and its institutions to create exclusiveness, or more privacy, in the use of property:

It is often treated as a coincidence that the economic success that separates modern economies from millennia of much lower growth rates and much greater volatility of wealth closely tracks the rise of nation-states that rely on law as their primary means of social ordering. Many commentators herald the advent of private property rights, seen as a critical restraint on state power, as the key explanation for the rise of the West. Yet, it may be more accurate to attribute this to the state's willingness to back the private coding of assets in law, and not only property rights in the narrow sense, but also other legal privileges that confer priority, durability, convertibility, and universality on an asset. Indeed, the fact that capital is linked to and dependent on state power is often lost in debates about market economies. Contracts and property rights support free markets, but capitalism requires more—the legal privileging of some assets, which gives their holders a comparative advantage in accumulating wealth over others .[187] (Emphasis supplied, citations omitted)

The book further discusses how state institutions have facilitated this process of perpetuating wealth for the wealthy by protecting and enforcing the privatization of capital using the state's coercive mechanisms:

Public power is essential for ensuring that the code's attributes are respected and enforced. Two parties can agree to a contract and live up to its terms, but if they want to prevent others from interfering with their agreement, they need more. Anyone can assert physical control over physical assets and claim that it has always been hers; but it takes vigilance and resources to protect assets in this fashion. If these costs can be socialized by delegating the protection of legal rights to a state, asset holders save huge costs. More important, they can use their assets in ways that simply would not be available otherwise. They can own assets without exercising physical control over them. They can even own intangibles, assets that cannot be touched and exist only in legal code, and move assets into legal shells where they are protected from their own creditors, pledge and even re-pledge them without leaving more than a paper trail. They can do all of this only with the help of law that is backed by state power.

. . . .

The state and its agents, the courts and regulators, often play a passive role. There are times when they actively break down barriers to new coding strategies or extend additional legal subsidies to holders of capital—typically in the form of exemptions from existing rules or tax benefits. For the most part, however, the state needs to do little more than recognize and enforce the rights that private parties have coded in order to protect, and even expand, the interests of the holders of capital. This does not mean that the state always sides with capital. Efforts have been made in the past to balance powerful private property rights with public interests, which can take the form of seizing private property, although only for adequate compensation. Several legal systems have created powerful labor rights or have bestowed "new property rights" in the form of entitlements to special protection and other claims against the state on citizens that found themselves on the short end of a system that tends to create enormous wealth for some, while leaving the rest to fend for themselves. Not only capital is coded in law, but so too are other entitlements; it is a matter of social choice to whom to leave the final say about which assets deserve special status in law. On balance, privately coded capital has won the day, time and again, although not with periodic convulsions that have forced the hand of legislatures to rebalance the playing field or at least to mitigate the losses that less well protected individuals face.[188] (Emphasis supplied, citations omitted)

This enclosure of the common pool resources through the law or "legal coding" is perpetuated by the idea that public resources and access thereto may be privately owned to the exclusion of all others, including the State. I submit that this is incompatible with a sustainable approach to natural resource management.

The protection of public resources, especially our natural resources, is the very foundation of our people's Constitutional right to a balanced and healthful ecology. Each of our citizens depend on the environment and our natural resources for various aspects of life—as a source of food, as a means of livelihood, as a foundation for good health and relaxation, to name a few.

In the recent case of *Quezon for Environment v. Medialdea*,^[189] this Court stressed that the right to a balanced and healthful belongs to a higher category of rights as it is so basic a right that it does not even need to be written in the Constitution:

The significance and origins of the right to a healthful and balanced ecology were elucidated on by the Court in *Oposa v. Factoran*, as follows:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.

The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. During the debates on this right in one of the plenary sessions of the 1986 Constitutional Commission, the following exchange transpired between Commissioner Wilfrido Villacorta and Commissioner Adolfo Azcuna who sponsored the section in question:

MR. VILLACORTA:

Does this section mandate the State to provide sanctions against all forms of pollution — air, water and noise pollution?

MR. AZCUNA:

Yes, Madam President. The right to healthful (sic) environment necessarily carries with it the correlative duty of not impairing the same and, therefore, sanctions may be provided for impairment of environmental balance.

The said right implies, among many other things, the judicious management and conservation of the country's forests. Without such forests, the ecological or environmental balance would be irreversibly disrupted.

Although the right to a healthful and balanced ecology is found in the Declaration of Principles and State Policies rather than under the Bill of Rights, this right has been highly regarded by the Court. The RPEC and the writ of *kalikasan* are no less than manifestations of this. Stemming from the Court's role as a bastion for the protection of all constitutional rights, the Court understands the importance of preserving, conserving, and protecting the country's flora and fauna for humankind's enjoyment and survival.

The right to a healthful and balanced ecology is not only an entitlement; it also confers a duty. This duty—one's duty to protect the environment — applies to all who enjoy this right. Those responsible for enforcing and implementing laws have a particular responsibility in this regard. As vanguards of the people they serve, they are not only endowed with this duty; in fact, they are expected to uphold it with the highest commitment.^[190]

As earlier discussed, a number of our citizens depend on these common resources for their sustenance and livelihood. In my Dissenting Opinion in *Zabal v. Duterte*,^[191] I advanced that the right to livelihood is on the same level as the rights to life and liberty, and therefore takes precedence over the right to property:

The right invoked is not merely the right to property. The right to livelihood falls within the spectrum of the almost inviolable right to life and liberty. The ability to answer a calling, evolve, and create a better version of oneself, in the process of serving others, is a quintessential part of one's life. The right to life is not a mere corporeal existence, but includes one's choice of occupation. This is as important as to those who belong to the informal sector. It is an aspect of social justice that their right to be able to earn a livelihood should be protected by our Constitution.

In the hierarchy of rights, the right to life and the right to liberty sit higher than the right to property. This is also the import of Article II, Section 11 of the Constitution which provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

We recognize the primacy of human rights over property rights because these rights are "delicate and vulnerable[.]" They are so precious in our society, such that the threat of sanctions may deter their exercise almost as strongly as the actual application of sanctions. They "need breathing space to survive"; thus, government regulation is allowable only with "narrow specificity."

In contrast, property rights may be readily qualified as evidenced by the many rules and laws that have been enacted on property ownership and possession. Article XII, Section 6 of the Constitution qualifies the right to property:

SECTION 6. The use of property bears as social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.[192] (Citation omitted)

Verily, the protection of the commons through the implementation of measures that promote sustainability is one of the most important duties of the State to ensure the protection of its citizens' rights to life, liberty, livelihood and a balanced and healthful ecology.

Therefore, "trade secrets," commercial knowledge, or some other novel conception of private property, should not prevent the State from fulfilling its duty to protect its people's interests. I further submit that a concept of property or property rights that precludes the State from gathering regulatory information on fisheries resources and other commons is inconsistent with Article XII, Section 2 of the Constitution. As I discussed in a separate opinion:

Article XII, Section 2 of the Constitution provides for the State's ownership of and authority over its waters:

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

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

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 fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution[.]

In this regard, the State has both dominium and imperium over its waters. It has ownership or proprietary rights, and it has governmental authority of regulation and control over it. It has the capacity, therefore, to control the exploration, development, and utilization of natural resources. However, it is still limited by other rights provided under the Constitution.[193] (Emphasis supplied)

Conversely, I submit that common pool resources, such as the sea and its aquatic resources, are a common heritage of our people and should be regulated, as such. The State's exercise of both dominium and imperium over the country's natural resources requires a concurrent interpretation that private property and property rights are subject to the State's duty to uphold the common good. Article XII, Section 6 of the 1987 Constitution provides basis for this Court's regulation of private enterprises and businesses with a view toward the common good. Claims of private interests in allegedly confidential business practices must necessarily be subordinate to the common benefit resulting from regulations promoting responsible resource management.

ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

....

Section 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

In any event, regulating "the right to own, establish, and operate economic enterprises" for "the common good" manifests in the State's duty to manage its peoples' natural resources through the issuance of licenses or permits before certain individuals or corporations may share in the use of natural resources. Thus, one's mere possession of a license or permit does not mean that the holder obtains rights that surpass public interest and the common good. "[A] license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right." [194] This is consistent with the public trust doctrine, as "the exploration, development and utilization of the country's natural mineral resources are matters impressed with great public interest." [195]

V

On the parties' contentions regarding the right to equal protection of the laws, Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment [196] discussed the essence of such protection:

"Equal protection of the laws" requires that "all persons...be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities." [197] (Citations omitted)

Simply put, equal justice under the law demands that the state govern without bias. That it refrains from distinguishing between individuals based solely on differences that are immaterial to a legitimate government goal. [198]

The majority ruled that FAO No. 266 violates the equal protection clause of the Constitution because the implementation of VMS and ERS was only applicable to commercial fishing vessels, excluding municipal fishing vessels. [199] With due respect, I disagree.

The equal protection clause does not prohibit lawmakers from making classifications in statutes that provide for specific classes of persons or objects, or affect only specific classes of persons or objects, as long as these classifications are consistent with the standards set by jurisprudence. Thus, as aptly explained in *Sameer Overseas Placement Agency, Inc. v. Cabiles*: [200]

A law that does not violate the equal protection clause prescribes a reasonable classification.

A reasonable classification "(1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class." [201] (Citations omitted)

Despite admitting that "there is a significant difference between commercial fishing and municipal fishing" [202] as defined in Republic Act No. 8550, the majority ruled that the law, insofar as compliance with the VMM regulation promulgated by the Department of Agriculture and the BFAR, did not distinguish in terms of its application. [203]

Citing Section 14 and 119 of Republic Act No. 8550, as amended, the majority emphasized that the monitoring, control, and surveillance system shall encompass all Philippine-flagged fishing vessels regardless of fishing area and final destination. [204] Thus, it found no sufficient justification when FAO No. 266 indiscriminately singled out commercial fishing vessels from its coverage while excluding municipal fishing vessels. [205]

I find this piecemeal application of the textual provisions of Republic Act No. 8550, as amended, problematic.

Basic is the rule in statutory construction that every provision of a law must be interpreted in relation with the others, and kept in line with the general intent of the whole enactment. The law should not be read in truncated parts, and particular words, clauses, and phrases should not be interpreted as detached and isolated expressions. This will make every part of the statute harmonious and whole. [206]

Section 14 and 119 of Republic Act No. 8550, as amended by Republic Act No. 10654, should be read in connection with Section 16 and 65 of the same law. The provisions are as follows:

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

....

SEC. 16. Jurisdiction of Municipal/City Government. — The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

The management of contiguous fishery resources such as bays which straddle several municipalities, cities or provinces, shall be done in an integrated manner, and shall not be based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management. The Integrated Fisheries and Aquatic Resources Management Councils (FARMCs) established under Section 76 of this Code shall serve as the venues for close collaboration among LGUs in the management of contiguous resources.

....

SEC. 65. Functions of the Bureau of Fisheries and Aquatic Resources. — As a line bureau, the BFAR shall have the following functions:

....

(n) enforce all laws, formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters, and to settle conflicts of resource use and allocation in consultation with the NFARMC, LGUs and local FARMCs;

....

(r) formulate and implement rules and regulations for the conservation and management of straddling fish stocks, highly migratory fish stocks and threatened living marine resources such as sharks, rays and ludong, inter alia, in the Philippine Exclusive Economic Zone, territorial sea, archipelagic and internal waters, in coordination with LGUs and integrated/municipal/city Fisheries and Aquatic Resources Management Councils;

....

(u) adopt an appropriate monitoring, control, surveillance and traceability system for municipal fishing vessels supplying exporters with concurrence of the local government units;

....

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[.] (Emphasis supplied)

From the following provisions, it can be seen that the statute itself provided for the distinction as between who has

jurisdiction over the formulation and enforcement of rules and regulations for the conservation and management of fishery resources.

The law explicitly provides that municipal and city governments are given exclusive jurisdiction to manage, conserve, develop, protect, utilize, and dispose of all aquatic resources within their respective municipal waters, including the enforcement of all fishery laws, rules, and regulations. The DA and the BFAR's roles are only consultative.

When it comes to the MCS and VMM, the law gives the Department and the BFAR primary authority to establish and formulate the pertinent rules and regulations governing the same. However, in terms of its application and enforcement in municipal waters, the law provides that the same shall be in coordination with the respective local government units.

I echo the sentiments of my colleague Associate Justice Henri Jean Paul B. Inting during deliberations that the Department and the BFAR could not have made FAO No. 266 applicable to municipal fishing vessels given that it would be outside the scope of their authority as provided for by law.

In order to muster the constitutional challenge against equal protection, the distinction and the classification under the law and the regulation must be reasonable. I submit that it is.

Under Republic Act No. 8550, municipal fishing refers to fishing within municipal waters using fishing vessels of three gross tons or less while commercial fishing refers to the taking of fishery species by passive or active gear for trade, business and profit beyond subsistence or sports fishing using fishing vessels of 3.1 gross tons up to more than 150 gross tons.[207] From this disparity alone, there exist a substantial difference that make up for real differences to justify the legislature's classification.

Further, Section 2(d) and (e) of Republic Act No. 8550 provides:

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;

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

As opposed to large commercial fishing companies, municipal fisherfolk engage mainly in traditional methods of fishing for their daily subsistence.[208] The inherent limitations on the methods of fishing available to municipal and commercial fishers create a clear distinction between them. Not only are municipal fisherfolk limited to fishing in shallower waters compared to a greater majority of commercial fishers, but the gap between their respective fishing capacities means that municipal fishers exploit fisheries resources at a much lower rate and to a much lesser extent than commercial fishers. A research paper published in the Philippine Law Journal illustrates the limitations experienced by municipal fishers compared to commercial fishers:

Municipal fishermen are known to use very traditional fishing methods at present, leading to production

figures per fishing banca or per fisherman much lower than that possible with the application of modern technology. Common fishing methods require more labor than capital, and cheaper native materials are more commonly used. This is due to the lack of sufficient capital to build and use improved technologies; fishermen use whatever commodities are available in the locality to make their own fishing equipment.

The typical municipal fisherman operates a small, light, reinforced dug-out craft (banca) of not more than 3 gross tons, and also other gear, such as corrals, not requiring the use of boats but still widely used within municipal waters. Originally, bancas were propelled with paddle or sail; in recent years, motorization has gained increasing acceptance. Even the motorized banca, however, is unsuitable for marine operation far from shore.[209] (Citations omitted)

These distinctions provide sufficient basis for the different treatment of commercial and municipal fishers before the law. Further, as subsistence fishers limited to the confines of shallower fishing areas, municipal fisherfolk bear the brunt of local fisheries resource degradation.[210]

Though there are various reasons for the depletion of the fish supply, most fishermen perceive overfishing as the prime factor. This is most felt in traditional fishing grounds. There appears to be more evidence of overfishing of nearshore species, the implication being that municipal fishermen are more likely to be affected by overfishing than commercial fishermen who can fish for demersal and pelagic stocks farther off-shore.[211] (Citation omitted)

Because of their vulnerable state, the law affords primacy over municipal fisherfolks in terms of the protection of their rights and the provision of support. This classification is germane to the overall purpose of the Fisheries Code which is entitled "An Act Providing for the Development, Management and Conservation of the Fisheries And Aquatic Resources."

Besides, the law is also clear—municipal fishing vessels are not excluded from MCS and VMM compliance. There is no discrimination in FAO No. 266 for only including commercial shipping vessels. The opportune regulation must be promulgated by the Department and the BFAR in coordination with the local government units concerned.

VI

In the same vein, the Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.[212] In *Alliance for the Family Foundation Philippines, Inc. v. Garin*,[213] the Court explained the two aspects of due process:

Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof.

Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. Procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.[214] (Citations omitted)

The majority ruled that the Republic failed to comply with the procedural due process requirements under Administrative Order No. 10, series of 2015, or the Rules and Regulations implementing Republic Act No. 8550, as amended by Republic Act No. 10654, particularly the lack of scientific study and public consultation when FAO No. 266 was formulated.[215] Thus, violating the due process rights of *Royale Fishing et al.*[216]

In other words, the majority framed the issue to mean that non-compliance with the procedure set forth in the

Implementing Rules and Regulations of Republic Act No. 8550, as amended by Republic Act No. 10654, when formulating rules and regulations directly equates to a violation of the Constitutional due process right of Royale Fishing et al.

With utmost respect, I disagree.

The exercise of powers by an administrative body is classified into two: quasi-judicial and quasi-legislative powers. In *Alliance*, the Court expounded on such powers:

Quasi-legislative power, otherwise known as the power of subordinate legislation, has been defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy. "A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof." The exercise by the administrative body of its quasi-legislative power through the promulgation of regulations of general application does not, as a rule, require notice and hearing. The only exception being where the Legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation.

Quasi-judicial power, on the other hand, is known as the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself. As it involves the exercise of discretion in determining the rights and liabilities of the parties, the proper exercise of quasi-judicial power requires the concurrence of two elements: one, jurisdiction which must be acquired by the administrative body and two, the observance of the requirements of due process, that is, the right to notice and hearing.[217] (Citations omitted)

From this, the exercise of the Department and the BFAR in formulating PAO No. 266 is clearly in the exercise of their quasi-legislative powers. Procedural due process standards in the exercise of quasi-judicial powers—the failure of which results in a violation of one's Constitutional right to due process—is not applicable in the case at bar.

Following the pronouncement in *Alliance*, the requirement of notice and hearing, as a general rule, is not required when an administrative body is exercising quasi-legislative powers unless the Legislature itself requires and mandates the same. Here, the Fisheries Code did not require nor prescribe any notice and hearing requirements for the formulation of pertinent rules and regulations to implement the same.

I fully support Justice Javier's position that the Court must not unduly impede on the Department and the BFAR's implementation of our Fisheries Code in the guise of deprivation of due process owing to the alleged lack of public consultations. These executive agencies possess the "technical expertise and judgment in the field of the country's aquatic resources and marine ecosystems"[218] which the Court is duty-bound to respect.

In any case, as admitted during the Oral Arguments, respondents had every opportunity to participate in the public consultations during the formulation of the FAO No. 266.[219] In fact, commercial fishing companies, including respondents, were represented in the National Fisheries and Aquatic Resources Management Council which was in consultation with the Department when it formulated FAO No. 266.[220]

VII

FAO No. 266 is a key regulation in our State's duty to counter IUUF in our waters. The VMS tool it requires of commercial fishing vessels is an advancement from the manual reporting previously utilized and relied upon.

The conversion from manual reporting to digital reporting consistent with this Court's priority reforms. Under the leadership of the esteemed Chief Justice Gesmundo, this Judiciary launched several measures pursuant to its

reformation and modernization program: the Strategic Plan for Judicial Innovations (SPJI). Particular focus was given to the introduction of systems that would digitally transform our courts.[221]

On May 27, 2024, this Court launched the Philippine Judiciary Platform to serve as the unified access point for the Judiciary's digital applications.[222] Through this platform, individuals can submit their bar exam application, judges can register for the Judicial and Bar Council (JBC) Online Registration and Application System, and the like.[223]

On August 20, 2024, this Court promulgated the Guidelines on Submission of Electronic Copies of Pleadings and other Court Submissions being filed before the Lower Courts pursuant to the Efficient Use of Paper Rule/Moving Towards Digital Courts: Component One: Transition to Electronic Filing and Service of Pleading, Motions and Other Documents as Well as Digital Services of all Orders in Civil Cases. Thus, starting December 1, 2024, all civil cases before first- and second-level courts are required to use electronic transmittal as the primary manner of filing pleadings and other court submissions.[224]

Starting January 30, 2025, the pilot testing for eCourt PH ver. 2.0 began. This system seeks to simplify and automate case management and court processes through electronic filing and service of court documents in civil cases, electronic filing and case management in the Supreme Court and appellate courts, installation of court management applications, streamlining case processing and calendar scheduling, and the like.[225]

On September 30, 2025, the 2025 Transitory Rules on Electronic Filing and Service in the Supreme Court was released. Starting October 30, 2025, all pleadings, motions, and papers filed before the Supreme Court must be electronically filed, except for certain cases.[226]

In a few short years, this Court managed to set in place mechanisms that are leaps and bounds more advanced than the previous system. From paper-dependent filing, analog reporting and uploading of data, courts are now able to digitalize, streamline, and expedite their processes.

The measures required under FAO No. 266, particularly the VMS and electronic reporting systems, also seek to digitalize, streamline, and expedite BFAR's processes. More, this regulation is the State's fulfillment of its obligation to protect its citizens' rights to life, liberty, livelihood and a balanced and healthful ecology.

Verily, this Court's Decision to declare FAO No. 266 as unconstitutional is anathema not only to our State's ownership and duty of stewardship over the commons, but also to the Judiciary's recognition that digital transformation is necessary. Denying the benefits of improved regulatory technology contradicts this Court's drive toward improving efficiency, innovation, and accessibility of government functions and services. This stand may be interpreted as the Court favoring the cumbersome analog reports from our fishers rather than evolving to a real-time and reasonable digital system. The extent of this contradiction deepens given the fraught situation of Philippine fisheries and fish stocks, which has long been overfished and overdue for regulatory improvements.

VIII

Finally, I submit that the possible repercussions of our failure to implement a VMS deserves further consideration.

The majority reasons that despite the petitioners' fear of sanctions on Philippine fish exports for a breach of an international obligation, there has been no decline in Philippine fishing exports to the countries allegedly threatening the same.[227] Thus, the majority concludes that non-implementation of the VMS requirement did not "materially or significantly affect the fishing industry." [228]

In my opinion, the Court would benefit from a broader perspective on this issue. Non-compliance with the VMS requirement affects not only the Philippine fishing industry but also its obligations under international law.

The petitioners' Memorandum references the Philippines' international obligations in discussing its concerns over international sanctions against the Philippine fishing industry.[229] Thus, in addition to possible monetary losses resulting from non-compliance with multilateral fishing agreements, the Philippines also stands to commit a breach of its international obligations.

A State incurs a breach of an international obligation not when it is sanctioned, but, rather, when an attributable act or omission violates an international obligation.[230]

As earlier discussed, Philippines' multilateral agreements with other States require the adoption of means and methods to monitor fish catch and to prevent IUUF. These agreements include the Convention on the Conservation and Management of Highly Migratory Fish Stocks,[231] the United Nations Fish Stocks Agreement,[232] and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.[233]

The installation of VMS, as provided by FAO No. 266, which was issued in compliance with these multilateral agreements, is one of these means and methods. Thus, the supposed absence of any decline in Philippine fish exports has no relation to the issue of whether an obligation under international law is being or has been breached. While the effects of a breach may be seen from sanctions eventually imposed by other States, they first impact the erring country's standing in the international community. More than the monetary losses that may result from a breach of our international obligations, we stand to lose more in terms of credibility before the international legal community.

IX

I respectfully submit that the operative fact doctrine may apply in this case as "an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration." [234] As such an exception, it may apply "only as a matter of equity and fair play[.]" [235] and when "the nullification of the effects of what used to be a valid law would result in inequity and injustice[.]" [236]

Since laws and governmental actions enjoy the presumption of constitutionality, the public's reliance in good faith on such laws and governmental actions should not be punished. As explained in Justice Fernando's Concurring Opinion in *Municipality of Malabang v. Benito*, [237] this consideration for the public is inherent in a legal system that recognizes the power of judicial review as a means of examining the validity of Executive and Legislative actions:

Since under our Constitution, judicial review exists precisely to test the validity of executive or legislative acts in an appropriate legal proceeding, there is always the possibility of their being declared inoperative and void. Realism compels the acceptance of the thought that there could be a time-lag between the initiation of such Presidential or congressional exercise of power and the final declaration of nullity. In the meanwhile, it would be productive of confusion, perhaps at times even of chaos, if the parties affected were left free to speculate as to its fate being one of doom, thus leaving them free to disobey it in the meanwhile. Since, however, the orderly processes of government, not to mention common sense, requires that the presumption of validity be accorded an act of Congress or an order of the President, it would be less than fair, and it may be productive of injustice, if no notice of its existence as a fact be paid to it, even if thereafter, it is stricken down as contrary, in the case of Presidential act, either to the Constitution or a controlling statute.[238]

The operative fact doctrine, therefore, allows the prospective application of this Court's declaration that a law or governmental act is unconstitutional. In prospectively applying the consequences of a law's unconstitutionality, this Court seeks to avoid "the physical undoing of [worthy results such as public infrastructure, could easily

include roads, bridges, homes for the homeless, hospitals, classrooms and the like] by destruction" or "most undesirable wastefulness." [239]

However, *Mandanas v. Ochoa* [240] emphasized that the operative fact doctrine requires "extraordinary circumstances" for its application, [241] which *Film Development Council of the Philippines v. Colon Heritage Realty Corporation* [242] further clarifies, as follows:

Therefore, in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand. It should not operate to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law. [243]
(Citation omitted)

In several instances, this Court has refused to apply the operative fact doctrine in the absence of these "extraordinary circumstances," such as in *Commissioner of Internal Revenue v. San Roque Power Corporation*, [244] where this Court denied respondent's claim of good-faith reliance on a supposed administrative practice, which could "not be uniformly and consistently applied" or "be known to the general public." [245]

Under Section 246, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or ruling, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency. [246]

Likewise, this Court in *Concerned Officials and Employees of the National Food Authority-Regional Office No. II, Santiago, Isabela v. Commission on Audit*, [247] found that the benefits granted to employees could not apply retroactively for failure to comply with the rules and regulations governing the grant of such benefits:

The situation in the case at bar, however, does not call for the application of the doctrine of operative fact. The basis of the underlying disallowance that precipitated this case was not because of a statute, law, or executive issuance or act being judicially declared unconstitutional or invalid. The disallowance was for failure to follow the pertinent laws or rules for the grant of additional benefits to NFA personnel. As a rule, originating from considerations of equity, the doctrine does not and cannot bypass or erase laws, rules, or regulations that apply to a certain state of facts on the basis of an allegation that an executive act or issuance is valid because of its beneficial consequences—in this case the grant of FGI to NFA personnel—when these state of facts clearly demonstrate a failure to comply with the pertinent laws, rules, or regulations. This is not how the doctrine of operative fact should be applied. To subscribe to this line of thinking that petitioners would most certainly render the audit power of COA over the use of public funds nugatory. [248]

Thus, the doctrine does not simply validate a law or governmental act that was later found unconstitutional or invalid. Rather, it protects third parties that relied in good faith on a law or governmental action that was presumed constitutional at the outset. As expressed in a separate opinion in *Araullo v. Aquino III*:

As a rule of equity, the doctrine of operative fact can be invoked only by those who relied in good faith on the law or the administrative issuance, prior to its declaration of nullity. Those who acted in bad faith or with gross negligence cannot invoke the doctrine. Likewise, those directly responsible for an illegal or unconstitutional act cannot invoke the doctrine. He who comes to equity must come with clean hands, and he who seeks equity must do equity. Only those who merely relied in good faith on the illegal or unconstitutional act, without any direct participation in the commission of the illegal or unconstitutional act, can invoke the doctrine. [249]
(Citation omitted)

Castañeda v. Commission on Audit,[250] further emphasizes the doctrine's purpose of mitigating the unintended effects of subsequently invalidating a law or governmental action:

To stress, the doctrine of operative fact is an equitable tool designed to mitigate the unintended negative consequences of the subsequent invalidation of statutes or executive issuances. It is not a tool to validate or excuse actions that were never lawful in the first place.[251]

In view of the foregoing, I respectfully submit that FAO No. 266 implements a valid legal rule requiring "monitoring, control, and surveillance" measures for fishing vessels under Section 4, paragraph 55 and Section 14 of Republic Act No. 8550, as amended. These requirements are known to the public and have already seen initial implementation in FAO No. 260, which has not been declared unconstitutional. Subsequently, 90.4% of commercial fishing vessels in the Philippines complied with the VMS requirement.[252]

Given the doctrine's purpose of mitigating the "unintended negative consequences of the subsequent invalidation of statutes or executive issuances[,] "[253] the majority's prospective application to subsequent implementations of VMS would be only proper. Certainly, this Court could not have intended to leave its waters unmonitored, and its marine resources unprotected from illegal, unreported, and unregulated fishing practices.

Further, declaring VMS compliance illegal would amount to "the physical undoing of [worthy results such as public infrastructure, could easily include roads, bridges, homes for the homeless, hospitals, classrooms and the like] by destruction" or "most undesirable wastefulness." [254] Various studies have shown how VMS is effective at curbing illegal, unregulated, and unmonitored fishing practices. It would be a disservice to burden compliant vessels with the time and cost of removing their VMS equipment. Likewise, the BFAR and DA exhibited good faith in the issuance and implementation of FAO No. 266 by complying with due process requirements and in observing valid distinctions in implementing VMS implementation for commercial and municipal fishing activities.

Moreover, I submit that reversing or undoing VMS compliance would have significant effects on the ecological balance and sustainability of our already strained marine resources. Inasmuch as regulators and third-party vessel owners and operators have relied in good faith on the validity of FAO No. 266, and have benefitted to whatever extent from its implementation, the same benefits should be preserved in favor of a balanced and healthful ecology.

Further, to my position that the operative doctrine applies in this case, I submit that the disposition in the main opinion should not be immediately executory. In my opinion, allowing the relevant agencies time to shore up the gaps and deficiencies in their regulations for implementing VMS would minimize the threat posed by the latter's absence.

Resolving these issues requires a broader and more holistic view of what will advance the country's best interests, considering its international obligations and its duty of public trust over natural resources. Recognizing the VMS as a necessary tool for effectively monitoring fishing activities within our waters, together with its other valuable functions, protects our fishing industry from possible sanctions, ensures the sustainability of fisheries resources, advances our regulators' abilities to fulfill their duties, and reinforces the Philippines' standing in support of the rule of law on a global scale.

ACCORDINGLY, I vote to GRANT the Petition.

[1] 162 GARRETT HARDIN, THE TRAGEDY OF THE COMMONS, 1234 (1968), available at 10.1126/science.162.3859.1243 (last accessed on March 27, 2026).

[2] CONST. (1987), art. XII, sec. 2.

[3] *Maynilad Water Services, Inc. v. DENR Secretary*, 858 Phil. 765, 812 (2019) [Per J. Hernando, En Banc].

[4] CONST. (1987), art. XII, sec. 6 provides: SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

[5] Ponencia, pp. 74-75. See Noel C. Barut et al., Overview of Philippine Marine Fisheries, Section II: Status of Marine Fisheries and Habitats, IN *TURBULENT SEAS: THE STATUS OF PHILIPPINE MARINE FISHERIES* 28-31 (2004); Richard N. Muallil, et al., Catch trends in Philippine small-scale fisheries over the last five decades: The Fishers' Perspectives, 47 *MARINE POLICY* 110, 114-115 (2014).

[6] *Id.* at 3-4.

[7] *Id.* at 9.

[8] *Id.* at 4-5.

[9] *Id.* at 6.

[10] See Annex "M" for G.R. No. 257049; pp. 4-5.

[11] ENVTL. PROC. RULE, A.M. No. 09-6-8-SC, April 29, 2010.

[12] Ponencia, p. 8.

[13] *Id.* at 10.

[14] *Id.* at 9.

[15] See Annex "E" for G.R. No. 257049; p. 23.

[16] *Id.* at 25-28.

[17] *Id.* at 28-30.

[18] Ponencia, p. 9.

[19] *Id.* at 10.

[20] See Annex "A" for G.R. No. 257049; p. 3.

[21] Ponencia, p. 11.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 3-4.

[25] *Id.* at 11-12.

[26] *Id.* at 12.

[27] *Id.* at 12-13.

- [28] Id. at 19.
- [29] RULES OF COURT, rule 63, sec. 1.
- [30] Republic v. Roque, 718 Phil. 294, 304 (2013) [Per J. Perlas-Bernabe, En Banc].
- [31] Ponencia, pp. 19-20.
- [32] Memorandum of the Republic dated January 10, 2024, p. 21.
- [33] 936 Phil. 17 (2023) [Per J. Leonen, En Banc].
- [34] Id. at 32.
- [35] Id. at 32-33.
- [36] 937 Phil. 639 (2023) [Per J. Zalameda, En Banc].
- [37] Id. at 644-645.
- [38] 936 Phil. 17 (2023) [Per J. Leonen, En Banc]; 937 Phil. 639 (2023) [Per J. Zalameda, En Banc].
- [39] J. Lazaro Javier, Concurring and Separate Opinion, p. 5.
- [40] Ponencia, pp. 21-22.
- [41] Id. at 29-30.
- [42] Id. at 36.
- [43] 789 Phil. 30 (2016) [Per J. Brion, Second Division].
- [44] Id. at 37-38.
- [45] Transcribed Stenographic Notes of the Oral Arguments held on November 21, 2023, p. 110.
- [46] Transcribed Stenographic Notes of the Oral Arguments held on November 21, 2023, pp. 109-111.
- [47] Transcribed Stenographic Notes of the Oral Arguments held on November 21, 2023, pp. 111-112.
- [48] Transcribed Stenographic Notes of the Oral Arguments held on November 21, 2023, pp. 114-118.
- [49] Ponencia, p. 23.
- [50] Id. at 6.
- [51] Id. at 7.
- [52] G.R. No. 256282, Petition for Certiorari, p. 16.
- [53] Ponencia, p. 10.
- [54] Id.
- [55] Id. at 44-45.
- [56] Id. at 45.
- [57] Id. at 47.
- [58] Id. at 48.

[59] Id. at 54.

[60] Id. at 66.

[61] Id.

[62] Id. at 54.

[63] *Spouses Hing v. Choachuy, Sr.*, 712 Phil. 337, 348 (2013) [Per J. Del Castillo, Second Division], citing Tolentino, Arturo M., 1 COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 108, (1990).

[64] J. Leonen, Separate Concurring Opinion in *Cadajas v. People*, 915 Phil. 220 (2021) [Per J. Lopez, En Banc].

[65] Id. at 287-289.

[66] *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Third Division].

[67] *Integrated Bar of the Philippines v. Purisima*, 940 Phil. 589, 631 (2023) [Per J. Leonen, En Banc], citing *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 132-133 (2014) [Per J. Abad, En Banc].

[68] Id. at 132-133. (Citation omitted)

[69] *Integrated Bar of the Philippines v. Purisima*, 940 Phil. 589, 631 (2023) [Per J. Leonen, En Banc], citing *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Camilo L. Sabio v. Gordon*, 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[70] 829 Phil. 65 (2018) [Per J. Carpio, En Banc].

[71] Id. at 82-84.

[72] Id. at 84.

[73] Ponencia, p. 47.

[74] Belt Rickcard Kipruto, *The Concept of Trade Secrets and its Effect on Economic Growth*, 1, 3 (2022), available at <https://ssrn.com/abstract=4284367> (March 18, 2026).

[75] Id. at 1.

[76] 564 Phil. 774 (2007) [Per J. Chico-Nazario, Third Division].

[77] Id. at 784-786.

[78] Memorandum of *Royale Fishing et al.* dated December 21, 2023, p. 43.

[79] *Air Philippines Corporation v. Pennswell, Inc.*, 564 Phil. 774, 786 (2007) [Per J. Chico-Nazario, Third Division].

[80] DA Fisheries Administrative Order No. 266 (2020), Rules and Regulations on the Implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Commercial Philippine Flagged Fishing Vessels Amending FAO 260 Series of 2018, sec. 4.

[81] DA Fisheries Administrative Order No. 198-1 (2018), Amended Rules and Regulations on Registration and Licensing of Commercial Fishing Vessels, Fishing Gears and Fishworkers, sec. 31.

[82] Bureau of Fisheries and Aquatic Resources, IMEMS - National VMS System for the Philippines, p. 3 (2019),

available at
<https://www.bfar.da.gov.ph/wp-content/uploads/2021/06/IMEMS-National-VMS-System-for-the-Philippines.pdf>
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[83] SRT Marine Systems PLC, VMS-100 User Manual, VMSC-82, 3, 6 (2019), available at <https://fcc.report/FCC-ID/UYW-429-0002/4525611.pdf> (last accessed on March 19, 2026).

[84] Bureau of Fisheries and Aquatic Resources, IMEMS - National VMS System for the Philippines, pp. 3, 5-7 (2019), available at <https://www.bfar.da.gov.ph/wp-content/uploads/2021/06/IMEMS-National-VMS-System-for-the-Philippines.pdf> (last accessed on March 19, 2026). See also Bureau of Fisheries and Aquatic Resources, IMEMS Phase II, List of Components, available at <https://region8.bfar.da.gov.ph/imems/> (last accessed on March 19, 2026).

[85] Executive Order No. 57 (2024), Strengthening the Philippines' Maritime Security and Maritime Domain Awareness, sec. 2 provides: National Maritime Council. The National Coast Watch is hereby renamed and reorganized as the National Maritime Council ("Council"). The Council shall be composed of the following:

Chairperson: Executive Secretary

Members: Secretary, Department of National Defense
Secretary and National Security Adviser, National Security Council;
Secretary, Department of Agriculture;
Secretary, Department of Energy;
Secretary, Department of Environment and Natural Resources;
Secretary, Department of Foreign Affairs;
Secretary, Department of Finance;
Secretary, Department of the Interior and Local Government;
Secretary, Department of Justice;
Secretary, Department of Transportation;
Solicitor General, Office of the Solicitor General; and
Director-General, National Intelligence Coordinating Agency.

[86] Executive Order No. 57 (2024), Strengthening the Philippines' Maritime Security and Maritime Domain Awareness, sec. 1 provides:

- a. "Maritime Domain" - all areas and things of, on, under, relating to, adjacent to, or bordering on an ocean, sea, or other bodies of water, including all maritime related activities, infrastructure, people, cargo and vessels and other conveyances. It includes the maritime zones such as internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelves;
- b. "Maritime Security" - protection and conservation of the country's marine assets, maritime practices, territorial integrity, and coastal peace and order. The concept of maritime security is all encompassing to include military, socio-economic, environmental, and political concerns, among others;
- c. "Maritime Domain Awareness" - effective understanding of anything associated with the maritime domain that could impact the sovereignty and sovereign rights, security, safety, economy, or environment of the country.

[87] Executive Order No. 57 (2024), Strengthening the Philippines' Maritime Security and Maritime Domain Awareness, sec. 5.

[88] SRT Marine Systems PLC, VMS-100 User Manual, (VMSC-82), 10 (2019), available at <https://fcc.report/FCC-ID/UYW-429-0002/4525611.pdf> (last accessed on March 19, 2026).

- [89] Transcribed Stenographic Notes of the Oral Arguments held on November 21, 2023, pp. 103-104.
- [90] Ponencia, pp. 50-52.
- [91] DA Fisheries Administrative Order No. 198-1 (2018), Amended Rules and Regulations on Registration and Licensing of Commercial Fishing Vessels, Fishing Gears and Fishworkers, sec. 31.
- [92] Ponencia, pp. 54-64.
- [93] Zomer Development Company, Inc. v. Court of Appeals (Special 20[th] Division), 868 Phil. 93, 116 (2020) [Per J. Leonen, En Banc]. (Citation omitted)
- [94] Ponencia, p. 56.
- [95] DA Fisheries Administrative Order No. 266 (2020), Rules and Regulations on the Implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Commercial Philippine Flagged Fishing Vessels Amending FAO 260 Series of 2018, whereas clauses provides:
- WHEREAS, SEC. 119 of Republic Act No. 8550 as. amended by Republic Act No. 10654, entitled "An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as the Philippine Fisheries Code of 1998 and for Other Purposes", provides 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 of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR) in coordination with the Local Government Units.
- WHEREAS, in accordance with Section 14 of the Fisheries Code, as amended, the DABFAR is mandated to establish a Monitoring, Control and Surveillance (MCS) system in coordination with the LGUs, FARM Cs, the private sector and other agencies concerned to ensure that the fisheries and aquatic resources are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens.
- WHEREAS, the Philippines is a signatory to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and is a party to various Regional Fisheries Management Organizations (RFMOs), Western Central Pacific Fisheries Commission (WCPFC), Island Overseas Transport Corporation/ Indian Ocean Tuna Commission (IOTC) and International Commission for the Conservation of Atlantic Tunas (ICCAT) and other Tuna RFMOs, as such, the Philippines must implement management measures such as vessel monitoring systems in accordance with the Convention and resolutions issued of the RFMOs[.]
- [96] Ponencia, p. 57.
- [97] Id. at 57-64.
- [98] Philip Marshall et al., Fishing Operations: Vessel Monitoring Systems, FAO Technical Guidelines for Responsible Fisheries, 1 FAO FISHING TECHNOLOGY SERVICE, p. 1 (1998), available at <https://openknowledge.fao.org/server/api/core/bitstreams/6f0974dd-f3b5-4afd-a836-198f875d644c/content> (last accessed on March 19, 2026).
- [99] Kevin W. Riddle, Illegal, Unreported, and Unregulated Fishing: Is International Cooperation Contagious? 37 OCEAN DEVELOPMENT & INTERNATIONAL LAW 265, 284 (2006).
- [100] Ponencia, p. 58.
- [101] Rene A. Enguehard, Rodolphe Devillers, Orland Hoeber, Comparing Interactive and Automated Mapping

Systems for Supporting Fisheries Enforcement Activities- A Case Study on Vessel Monitoring Systems (VMS), p. 3, JOURNAL OF COASTAL CONSERVATION (2012).

[102] Sara Orofino et al., Opportunities and Challenges for Improving Fisheries Management Through Greater Transparency in Vessel Tracking, 80(4) ICES JOURNAL OF MARINE SCIENCE 675, 675-676 (2023), available at <https://doi.org/10.1093/icesjms/fsad008> (last accessed on March 19, 2026).

[103] Id. at 677-678.

[104] Jordan T. Watson et al., Vessel Monitoring Systems (VMS) Reveal an Increase in Fishing Efficiency Following Regulatory Changes in a Demersal Longline Fishery, 207 FISHERIES RESEARCH 85 (2018).

[105] Id. at 85-86.

[106] Agung Bachtiar et al., Strengthening Illegal Fishing Monitoring through the Implementation of Vessel Monitoring System, 45(2) INTERNATIONAL JOURNAL OF PROGRESSIVE SCIENCES AND TECHNOLOGIES, 756 (2021).

[107] Id. at 760-761.

[108] Food and Agriculture Organization of the United Nations, International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (2001), sec. 24, available at https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/2001_ipoa_iuu.pdf (last accessed on March 19, 2026).

[109] Food and Agriculture Organization of the United Nations, International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (2001), sec. 24, available at https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/2001_ipoa_iuu.pdf (last accessed on March 19, 2026).

[110] Food and Agriculture Organization of the United Nations, International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (2001), sec. 69, available at https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/2001_ipoa_iuu.pdf (last accessed on March 19, 2026).

[111] The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Part V, art. 24(9), available at <https://www.wcpfc.int/sites/default/files/2025-08/text.pdf> (last accessed on April 22, 2026).

[112] The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Part V, art. 24(9), available at <https://www.wcpfc.int/sites/default/files/2025-08/text.pdf> (last accessed on April 22, 2026).

[113] Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement), September 26, 2022, art. 18(3)(e), available at https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/files/Projects/UNFSA/docs/unfsa_text-eng.pdf (last accessed on April 22, 2026).

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[118] Chonlada Meeanan et al., Using Vessel Surveillance Data to Estimate Spatio-Temporal Patterns in Short Mackerel Purse-Seine Fishery: Implication for Time-Area Closure Management in Thai Waters, 170 MARINE POLICY 106382 (2024).

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SEPARATE OPINION

CAGUIOA, J.:

I concur in the result.

Stripped to its core, the central issue in this case is whether Fisheries Administrative Order (FAO) No. 266, the regulation requiring the installation in all commercial fishing vessels and catcher fishing vessels within its scope of a Vessel Monitoring System (VMS) and an Electronic Reporting System (ERS) is valid.

The ponencia strikes down FAO No. 266 for failing to pass the rational basis test and for violating private respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., and RBL Fishing Corporation's (collectively, Royale Fishing, et al.) right against unreasonable searches and seizures, right to due process, and right to the equal protection of the law.[1]

As stated at the outset, I concur only in the result.

I agree with the ponencia that the rational basis test applies in this case, there being no fundamental right or suspect class involved. However, unlike thy ponencia, I find that the petitioner Republic of the Philippines (Republic), represented by the Department of Agriculture (DA), the Bureau of Fisheries and Aquatic Resources (BFAR), and the National Telecommunications Commission (NTC) has not sufficiently and convincingly shown that there is a legitimate government interest that justifies the requirement to install a VMS and an ERS under FAO No. 266. This is on top of the Republic's failure as well to show that there is a reasonable connection between the proffered government interest and the means employed to achieve it. The records establish that the Philippines' compliance with its international obligations is not hinged on the imposition of real-time monitoring of location and catch information of fishing vessels. And, even if this were true, BFAR's lackadaisical approach in protecting the information it collects does not reasonably further such interest.

Relative to my position above, I also believe that the Court need not delve into the merits of Royale Fishing, et al.'s claim that their location and catch data are trade secrets that enjoy the protection of the law. Section 127 of Republic Act No. 8550,[2] as amended by Republic Act No. 10654,[3] or "The Philippine Fisheries Code of 1998" (Fisheries Code), already categorizes information gathered from vessel monitoring systems as sensitive technical information. This provision, which imposes a positive duty on the part of the State to protect this data, should be taken into consideration in determining the validity of any Monitoring, Control and Surveillance (MCS) system.

Additionally, I submit that the assailed regulation violates the equal protection clause by requiring all commercial fishing vessels, without distinction, to submit their catch information via the ERS.

I.

The test under which the Court must review the present case is the rational basis test.

The ponencia applies the rational basis test to determine the validity of FAO No. 266, holding that Royale Fishing, et al.'s trade secrets with regard to their fishing activities do not fall within the scope and protection of the fundamental constitutional right to privacy. Instead, according to the ponencia, the invocation of Royale Fishing, et al. for the supposed protection of their trade secrets is primarily anchored on their economic interests. Additionally, the ponencia observes that since Royale Fishing, et al. are all juridical entities, they cannot invoke the constitutionally protected right to privacy. Thus, for these reasons, FAO No. 266 needs to only muster the rational basis test to be upheld as a valid exercise of the State's police power.

I agree.

Indeed, it is well-settled that the right to privacy belongs to individuals in their private capacity and cannot be invoked by juridical entities.[4] "[A] corporation has no right of privacy in its name since the entire basis of the right to privacy is an injury to the feelings and sensibilities of the party and a corporation would have no such ground for relief." [5]

Here, it must be emphasized that the violation of the right to privacy is being claimed by Royale Fishing, et al.—not by the individual fishermen conducting the actual fishing activities themselves. There is no allegation on

the part of the fishermen that the VMS and the ERS encroach on their personal sphere by constantly monitoring their personal activities while they are at sea. On this ground alone, the Court should deny outright Royale Fishing, et al.'s claim of violation of this right.

Even assuming, for the sake of argument, that the right to privacy applies equally to juridical entities and natural persons, I submit that operators of commercial fishing vessels have no reasonable expectation of privacy. The nature of commercial fishing, being one that rests on privilege granted by the State and is highly regulated, negates any reasonable expectation of privacy.[6]

There is no dispute that the State has the fundamental duty to protect the marine environment, which forms part of the national patrimony of the State.[7] These duties extend to the waters beyond the Philippines' jurisdiction, pursuant to the United Nations Convention on the Law of the Sea,[8] and pursuant to more specific international instruments and bodies for the conservation of marine resources to which the Philippines is a party (such as the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean),[9] and various Regional Fishery Management Organizations (RFMOs).

In this regard, the Fisheries Code, as amended, mandates the establishment of an MCS[10] system encompassing all Philippine-flagged fishing vessels 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.[11] BFAR's MCS measures include the installation of fisheries observers, the requirement of catch reports, the deputization of local fisherfolk to enforce relevant regulations at the municipal level, and the utilization of aerial reconnaissance missions with the Philippine Coast Guard.[12] The MCS thus operationalizes the Philippines' fisheries management policies, providing the means to collect relevant data that later becomes the basis for policy and decision-making.

Royale Fishing, et al., as grantees of fishing licenses, are obliged to abide by the State's regulations of the fishing industry, including these MCS measures.[13] The Fisheries Code itself is clear that the State merely "grant[s] the private sector the privilege to utilize fishery resources under the basic concept that the grantee, licensee or permittee thereof shall not only be a privileged beneficiary of the State but also an active participant and partner of the Government in the sustainable development, management, conservation and protection of the fishery and aquatic resources of the country." [14]

Given the foregoing backdrop, there is no absolute right to privacy granted to a fishing vessel licensee that should be recognized in this case. Any claim of absolute privacy is incompatible with the required submission of reports and the installation of an automatic tracking device, among others.[15] Since no fundamental right or basic liberty is involved, there is no basis to apply the strict scrutiny test in this case. As correctly held by the ponencia, what applies here, rather, is the rational basis test.

At the core of the controversy in this case is the validity of real-time or near real-time monitoring of fishing activities and collection of catch data. The Republic justifies the requirement for a strong MCS system, via the VMS and the ERS, as a legitimate exercise of the State's police power, because its primary objective is the protection and management of the country's marine resources, the conservation of which will undoubtedly redound to the general welfare of the public.[16]

It is well-settled that the legislature, which is the constitutional repository of police power and exercises the prerogative of determining the policy of the State, is by force of circumstance primarily the judge of necessity, adequacy or reasonableness and wisdom, of any exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest. Courts, on the other hand, although zealous guardians of individual liberty and rights, have nevertheless evinced a reluctance to interfere with the exercise of the legislative

prerogative.[17] Moreover, courts are not supposed to override legitimate policy, and courts never inquire into the wisdom of the law.[18]

Thus, in examining the validity of the real-time or near real-time monitoring of fishing activities under FAO No. 266, the rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.[19] On this point, the ponencia holds that there is no concurrence of these two requirements in this case. It finds that while there is a legitimate government interest, there is, however, no reasonable connection between it and the means employed to achieve it. I, on the other hand, submit that both elements are absent in this case.

A.

FAO No. 266 fails to further a legitimate governmental interest

To be sure, the rational basis test requires only a legitimate state interest. However, it bears emphasis that this does not entail fully submitting to the claimed purpose of the assailed regulation. To rule otherwise would be tantamount to a "no review at all." [20] This is the pitfall to which, I humbly observe, the ponencia has unfortunately fallen into.

In finding that there is a legitimate government interest in this case, the ponencia relies on the Republic's claims and the exhortation of the Constitution, to wit:

As to the first test, the Republic maintains that the installation of the VMM and ERS devices through FAO No. 266, is for the furtherance of the people's right to a balanced and healthy marine ecosystem in accord with the rhythm and harmony of nature, thus:

213. With the installation of the VMM and ERS devised through FAO [No.] 266, the regulatory authorities are provided with "fishing positions, fishing activities, and any other activity of the vessel as may be required," which may be used for both fisheries management (i.e., time-limited fishing, restricted fishing areas, and catch quotas) and enforcement purposes. The use of VMS will allow authorities to track fishing activities in near real-time, identify suspicious activities, and monitor vessels encroaching on restricted areas, thereby helping to reduce IUU fishing.

The Republic added that FAO No. 266 seeks to conserve marine resources, prevent IUUF in Philippine waters, and uphold the duty of the State to protect the people's right to a balanced and healthful ecology.

The people's right to a balanced and healthful ecology in accord with the rhythm and harmony of nature is specifically recognized under Article II of the Constitution, entitled Declaration of Principles and State Policies.

Additionally, in the landmark case of *Oposa v. Factoran, Jr.*, the Court declared that the right to a balanced and healthful ecology is a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind:

. . . .

Based on the foregoing, it is undeniable that a legitimate State interest is present in this case.[21] (Citations omitted)

Quite unfortunately, the foregoing amounts to a mere cursory or perfunctory review from the Court. I respectfully submit that the deference to applying the rational basis test should not translate into this. As expounded in the seminal case of *Ichong v. Hernandez and Sarmiento*, [22] the Court is called upon to carefully balance police power with the Constitutional guarantees of the people, viz.:

The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law; and persons may be classified into classes and groups, provided everyone is given the equal protection of the law. The test or standard, as always, is reason. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. And if distinction and classification has been made, there must be a reasonable basis for said distinction.[23] (Emphasis supplied)

Thus, in the application of the rational basis test, the Court should not hesitate to step in when there is a clear, patent, or palpable arbitrary and unreasonable abuse of the legislative prerogative.[24]

Lest it be misunderstood, the MCS system of BFAR, in general, being primarily anchored on the constitutional and international obligations of the State to manage and protect its marine resources, is a valid exercise of its powers pursuant to its mandate under the Fisheries Code. Nonetheless, what is at issue here is FAO No. 266 itself, which specifically requires the digitized reporting and real-time monitoring of commercial fishing activities. In particular, the government interests being evaluated in this case are: (i) the prevention of the adverse effects of sanctions from other countries, particularly the European Union, to our exportation of fish and fishery products;[25] and (ii) the guarantee that the VMMs in FAO No. 266 make the MCS systems of BFAR more effective in combatting Illegal, Unreported, and Unregulated Fishing (IUUF).[26] I submit that a closer inspection would reveal that these interests have not been sufficiently shown.

Firstly, the Solicitor General admitted that there is no specific international agreement requiring the installation of VMS for all kinds of fishing vessels:[27]

ASSOC[IA]TE JUSTICE [RODIL V.] ZALAMEDA:

Now, can you give us any international agreement, [t]reaty obligation that requires the installation of VMS for vessels to include all other fishes not only highly migratory and [straddling] fishes?

SOLICITOR GENERAL [MENARDO G.] GUEVARRA:

Your Honor, there are quite a number with general provisions for the adoption of . . . Vessel Monitoring Measures which include this VMS device. So for those that are targeting highly migratory fish stocks . . . the [C]onvention on the [C]onservation of [H]ighly [M]igratory and the [Straddling] fish stocks in the Western and Central Pacific Ocean. The one also covering the Indian Ocean Tuna and also . . . Atlantic Tuna but if your question, Your Honor is for. . .

ASSOCIATE JUSTICE ZALAMEDA:

Other fishes.

SOLICITOR GENERAL GUEVARRA:

Agreement covering other fish stocks. First of all there is the UNCLOS. Another one which is a very general treaty. The other one is the 1995 UN Fish Stocks Agreement which is equally as broad and general as UNCLOS and we have the FAO Code of Conduct for responsible fisheries and there are a number, Your Honor, of [i]nternational [t]reaties which deal in general with conservation measures which include the adoption of VMM or VMS to be more particular.

ASSOCIATE JUSTICE ZALAMEDA:

So in recent years there is no particular International Agreement or treaties which focuses on all kinds of fishes to be covered by the VMS requirements. It's merely the general law on the fishing the UN UNCLOS? (sic)

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor. The general treaties but for more specific types of fish stocks, then we have the regional conventions to speak of.[28] (Emphasis supplied)

When asked why the previous FAOs implementing the VMS are insufficient to comply with these obligations, the Solicitor General mentioned that there were several communications from the European Union advising that the Philippines comply with its commitments. Non-compliance may result in the European Union reinstating the Yellow Card, or worse, may lead to the issuance of a Red Card.[29] But a review of one of such letters from the European Commission—Directorate General for Maritime Affairs and Fisheries (European Commission) would reveal that only the VMS was deemed necessary. No such similar requirement was imposed for real-time monitoring of catch reports. The pertinent portions of the letter read:

It is of serious concern for the European Commission that 6 years after the lifting of the "yellow card[,] 38% of the tuna national fleet is still not equipped with VMS and only 7.4% of the entire commercial fleet operating in domestic waters is controlled by VMS. This is even more worrying taking into account the archipelagic nature of the Philippines with vast domestic fishing grounds.

In this context, we have serious doubts as regards the capability of BFAR to verify the catch area where the fishing activities take place and the date of the catch for all the fishing vessels that are not equipped with VMS. This also relates to BFAR controls over transshipments at sea and possible domestic vessels' fishing activities outside the EEZ. Recording and reporting fishing data are the basis of the catch certification scheme. BFAR validates catch certificates for all fishery products that the Philippines export to the EU.

....

I would be grateful to receive your confirmation that the whole national tuna fleet is equipped and monitored via VMS by September 2021. For the rest of the national commercial fishing fleet, including carrier and support vessels, we suggest to establish a roadmap with deadlines by size and type, with milestones by the end of 2021, by March 2022 and with the objective of having VMS on board of the whole national commercial fishing fleet by June 2022.[30] (Emphasis supplied, citation omitted)

Secondly, the European Commission's concern primarily relates to the credibility of BFAR catch certifications attesting to the fact that the Philippines' exported fish and fishery products are not sourced from IUUF. The urgency of their concern also appears to be targeted to the installation of VMS in commercial fishing vessels catching tuna, as these are the species primarily exported to their region.

In fact, during the Oral Arguments, the Republic admitted that the European Commission does not specifically require real-time monitoring and reporting of the location of the vessels and their catch. Thus:

ASSOCIATE JUSTICE [ANTONIO T.] KHO:

Okay. I would like to zero in on the main objection of respondent on the real time information. Based on our VMS or ERS, the vessel will have to require, ah, would have to disclose on real time their location, their catch, etc., is this a specific requirement from the EU? A real time information gathering from our commercial vessels?

SOLICITOR GENERAL GUEVARRA:

There is no specific requirement from the European Union regarding that. All it wants is an assurance, a certification from the BFAR that the fishery products that we are exporting to them are not sourced from IUUF. And for that reason, they are very much aware that we have not completely complied with, vessels, rather, have not completely complied with FAO 266 and that's what they're monitoring. They're looking for a 100% compliance with FAO 266.[31] (Emphasis supplied)

On this point, the ponencia's observations must be reiterated. The Philippines' export of fish and fishery products

to Europe did not decrease—as, in fact, the volume of exports increased—since the European Commission's June 1, 2021 communications.[32] Thus, the threat of some form of sanction from the European Union that was repeatedly harped upon by the Republic has been shown to be more imagined than real.

Again, the following interpellation is illuminating:

ASSOCIATE JUSTICE [MARIA FILOMENA D.] SINGH:

Yes. Again, a new argument, Mr. Solicitor General. Let's shift to the compliance that you filed on September 29, where you indicated that in 2021, the total value of Philippine Fishery export products to Europe amounted to some 319 Million US dollars. But then in the subsequent year of 2022 also, the amount even increased to some 375 Million US dollars. So, there is an increased (sic) from 2021 to 2022. So, despite the issuance of the permanent injunction by the RTC of Malabon, it would seem that the quantity of our fisheries export to the European Union has not decreased. That's correct based on your compliance?

SOLICITOR GENERAL GUEVARRA:

Yes, that is correct, Your Honor.

. . . .

ASSOCIATE JUSTICE SINGH:

Okay. So, my last question for the Republic is, are you aware if we have been issued, like a yellow card or a red card, by any other country or any other authority or organization by reason of this, the non-installation of VMS?

SOLICITOR GENERAL GUEVARRA: No other entity has issued any kind of warning to us except the European Union in 2014. A yellow card, a warning that was lifted the following year when Congress enacted the law against illegal, regulated, and unreported fishing.[33] (Emphasis in the original)

The foregoing yields to no other conclusion but that the rationale behind FAO No. 266 is unsubstantiated and belied by the Republic's own evidence.

B.

There is no reasonable basis for requiring the real-time submission of catch reports via the ERS.

As to the second requisite under the rational basis test, the ponencia astutely holds that the 24/7 monitoring of the location of a licensed fishing vessel and the round-the-clock reporting required under FAO No. 266 lack a reasonable connection with the legitimate interest invoked by the Republic.

I agree. Even on the assumption, purely for the sake of argument, that there is a legitimate governmental interest (i.e., the urgent call to comply with our international obligations on marine conservation and protection), the blanket requirement of installing the VMS and ERS for all commercial fishing vessels is not a reasonable means to achieve such interest.

The MCS system of BFAR under FAO No. 266 consists of two separate components: the VMS and the ERS. The VMS allows BFAR to track the location of fishing vessels and to monitor their activities. This is accomplished through the installation of an Automatic Location Communicator (ALC) in the fishing vessel, an automatic tracking device that transmits to BFAR the vessels' positions, speed, and direction.[34] The ERS, on the other hand, connects to the VMS transceiver to transmit catch data to BFAR.[35]

The ERS transmits the catch reports that fishing vessels would otherwise manually accomplish and submit after every fishing trip.[36] But even as these pen-and-ink forms were accomplished and submitted to BFAR prior to the effectivity of FAO No. 266, the frequency and manner of reporting has significantly burdened commercial

vessels by requiring the daily transmission. of catch reports:

Section 19. Transmission of Data

All ALC and ERS devices shall be turned on at all times and automatically activate when the vessel is active.

Each ALC shall transmit through either satellite or terrestrial systems to the [Fisheries Monitoring Center] the identity, position, course, speed and status of the vessels at any given time, as well as any emergency distress signals that might originate and other information required by the DA-BFAR.

All standard transmissions from ALC shall be encrypted to ensure data integrity – SOS transmissions shall not be encrypted.

Section 20. Frequency of Reporting

Fishing vessels shall keep their ALC activated at all times and shall be required to transmit a status report to the FMC a minimum of 24 times per day. Vessels equipped with ERS shall be required to transmit a minimum of one catch report per day. (Emphasis supplied)

The Republic justifies the adoption of these measures on the representation that BFAR's MCS operations would become more efficient and cost-effective as the VMS allows the near real-time monitoring of fishing activities. The Republic further claims that these measures should make the relevant data more accurate, allowing BFAR to more ably manage fisheries and aquatic resources and combat IUUF.[37]

These arguments totally fail to convince.

The VMS, through the ALC, allows BFAR to monitor the near real-time location of licensed commercial fishing vessels, as this device immediately alerts the authorities whenever it enters into protected or restricted areas. The ALC is also capable of sending distress signals in the event that the fishing vessel encounters an emergency.[38] With these information, BFAR can already easily monitor whether commercial fishing vessels go beyond the area covered by their fishing license, and immediately take appropriate action.[39]

As for the ERS, however, the Republic did not sufficiently justify how the daily submission of catch information reasonably achieves the objectives of FAO No. 266.

During the interpellation of Royale Fishing, et al., it was confirmed that the ERS does not collect new information from commercial fishing vessels. In fact, the catch report and data transmitted through the ERS, pursuant to FAO No. 266, includes the very same information that are placed in the physical forms manually submitted by fishing vessels upon their return to the port:

ATTY. [ARNOLD D.] NAVAL [(Counsel for Royale Fishing, et al.)]:

There's a form that their carriers submit to loading ports, unloading ports, Your Honor.

[ASSOCIATE] JUSTICE [ALFREDO BENJAMIN S.] CAGUIOA:

Unloading ports.

ATTY. NAVAL:

Yes, Your Honor.

[ASSOCIATE] JUSTICE CAGUIOA:

Correct. And do they also indicate the way these forms indicate the kind of fish that has been caught?

ATTY. NAVAL:

Yes, Your Honor.

....

[ASSOCIATE] JUSTICE CAGUIOA:

So, in other words, a fishing vessel goes out to sea, catches fish, and then, brings it back to port and reports it through these documents.

ATTY. NAVAL:

Yes, Your Honor:

[ASSOCIATE] JUSTICE CAGUIOA:

And the government or the port acting on behalf of the government can now see with its own eyes whether or not, oo nga yellow fish, tuna, etcetera, etcetera. The gross tonnage is this much, etcetera, tama iyong report.

....

ATTY. NAVAL:

Yes, Your Honor. They could verify.

[ASSOCIATE] JUSTICE CAGUIOA:

So, for purposes of determining only what has been caught, these documents already supply that?

ATTY. NAVAL:

Yes, Your Honor.

[ASSOCIATE] JUSTICE CAGUIOA:

Is this the same information that is required to be transmitted by the ERS? . . .

ATTY. NAVAL:

Yes, Your Honor.

[ASSOCIATE] JUSTICE CAGUIOA:

ERS. It's the same information?

ATTY. NAVAL:

It's the same information, Your Honor.

[ASSOCIATE] JUSTICE CAGUIOA:

So, it's exactly the same information?

ATTY. NAVAL:

Yes, Your Honor.[40] (Emphasis in the original)

Neither did the Solicitor General dispute this. In fact, Chief Justice Alexander G. Gesmundo's interpellation revealed that the ERS still relies on a self-reporting mechanism much like its manual counterpart:

CHIEF JUSTICE [ALEXANDER G.] GESMUNDO:

So, the output desired from the use of VMS is no different from the present manual reporting being done by these fishing vessels?

SOLICITOR GENERAL GUEVARRA:

In a sense, yes. But it's real time, it's digitized, it's less prone to human manipulation, and for quick enforcement.

CHIEF JUSTICE GESMUNDO:

But do you know the reported data is based on the reporting of the human factor, right?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor.

CHIEF JUSTICE GESMUNDO:

The one encoding. How reliable is the effectiveness of this gadget, the VMS?

SOLICITOR GENERAL GUEVARRA:

That is very true, Your Honor, because if there is an intent really to transmit fraudulent or incorrect data, that is still possible.[41] (Emphasis in the original)

Clearly, other than the digital transmission of reports, there is no substantial difference in monitoring the catch and effort data with the ERS. Even without the ERS installed on board the fishing vessel, the vessel operator is required to provide the very same information to BFAR upon arrival at the landing port. The ERS does not automatically generate in real-time the catch and effort data sought to be collected by BFAR, which the agency purportedly needs to detect and prevent IUUF.

As well, for purposes of managing the fish supply in a particular area, the receipt of daily catch reports does not sufficiently establish whether certain areas are overfished. BFAR must aggregate the catch reports and analyze the information in its entirety. This entails counterchecking the reported source of the fish with the location and position of the fishing vessel transmitted through the VMS. More importantly, since catch information is a self-reporting scheme, BFAR would have to validate the reports submitted by the fishing vessel operator, notwithstanding its transmission via the ERS.[42] This holds especially true for fish and fishery products intended for export, as BFAR conducts catch report validations in the landing port before the issuance of a catch certificate certifying that the fish or fishery product did not come from IUUF.[43]

Ultimately, the ERS relies on the assumption that the commercial fishing vessel operators will accurately report the required information. This is the same assumption on which the manual submission of catch reports is premised. And, as keenly observed by the Chief Justice, the information transmitted through the ERS is still susceptible of manipulation and human error. There is nothing that prevents the operator from maliciously filling up the required information in the ERS, much in the same way that they accomplish the catch log sheet or transshipment form while at sea.

It bears noting that, prior to FAO No. 266, BFAR required commercial fishing vessels targeting straddling and highly migratory fish stocks to submit their catch reports via the ERS.[44] But despite the limited implementation of the ERS, the Republic did not sufficiently show how the collection of information for these fishing vessels has demonstrably furthered its interests in regulating these activities, more so in apprehending vessels engaged in IUUF.[45] The Republic neither identified the gaps in its enforcement nor the inadequacy in fisheries information, which warrant the expansion of the ERS requirement to all commercial fishing vessels.

While the information gathered from the fishing activities of commercial vessels may prove useful in making regulatory decisions, the data reporting obligation of licensed fishing vessels under FAO No. 266 remains subject to the same risks as in manual reporting. Notwithstanding the ERS, BFAR can—as it already does—collect the necessary information for the enforcement of fishing regulations and conservation measures. For these reasons, I find that the ERS fails to satisfy the reasonableness requirement of the rational basis test.

At this juncture, it bears emphasizing that fishers tend to correlate the sensitivity of the information with the period of its disclosure.[46] As Royale Fishing, et al. argued, for every fishing trip, they take measures to conceal their location—with radio operators communicating in codes, or fishing operators making decoys. This creates a "strategic delay" that prevents competitors from immediately knowing which fishing grounds can yield the most catch.[47]

Thus, information given to the authorities on vessel identity, location, and activity that is available in real-time or near real-time is considered to have a higher risk of exposing the specialized skill and knowledge of a commercial fishing vessel, which would have otherwise taken years to learn and accumulate.[48] The manual submission to regulatory authorities of catch reports on fishing activities therefore serves to safeguard proprietary information. By awaiting the submission of catch and effort data after the fishing vessel has returned to the port, the economic disadvantage that could result from knowing where competing vessels fish is minimized.

In this regard, it is imperative that BFAR establish appropriate access controls and an effective framework to prevent the unauthorized disclosure of a commercial fishing vessel's activities. Absent these, FAO No. 266 seriously infringes upon the property right of commercial fishing vessels.

C.

The lack of necessary safeguards to protect sensitive technical information gathered from the ERS further makes the regulation unreasonable.

As explained earlier, fishing vessel licensees do not have the right to privacy or the right to be let alone because monitoring and reporting fishing grounds and catch are mandatory and impelled by compelling State interests. This, however, should be differentiated from their right against unauthorized disclosure of data gathered from such monitoring and reporting required by the State. In this instance, fishing vessel licensees may reasonably expect that there should be no such unauthorized disclosure. Simply put, while commercial fishing vessels are required to comply with the VMMs of BFAR as a condition to the validity of their fishing permit, BFAR has a concomitant duty to protect the information collected from these fishing vessels.

The location, speed, and direction of the fishing vessel, coupled with the species, volume of fish caught, equipment used, and more importantly, the date and time of the fishing venture, are valuable information that are gathered by the VMS and the ERS. When these data are aggregated, they reveal when and where certain types of fish abound during certain times of the year, and the proper technique to catch these fish. Obtaining this information can provide fishing operators with competitive advantage.

On this score, the ponencia holds that fishing activities are trade secrets.[49] But to me, whether or not this information rises to the level of "trade secrets" is beside the point. The Fisheries Code, as amended, expressly acknowledges the proprietary nature of these activities as sensitive technical information:

SEC. 127. Unauthorized Disclosure of Sensitive Technical Information. — Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information. Any unauthorized disclosure of said data including all other data referred to in Section 155 in this Code, by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

....

SEC. [155]. Protection of Sensitive Technical Information. — The Department shall take such measures as may be necessary in order to protect trade, industrial and policy information of Filipino fisherfolk, fisheries owners/operators, entrepreneurs, manufacturers and researchers, when disclosure of such information will injure the competitiveness or viability of domestic fisheries.[50] (Emphasis supplied)

Thus, as sensitive technical information, Section 127 of the Fisheries Code, as amended by Republic Act No. 10654, penalizes the unauthorized disclosure of this information with imprisonment, and removal from office and forfeiture of retirement benefits, where applicable. Section 155[51] of the same Code further mandates the DA to "take such measures as may be necessary in order to protect trade, industrial and policy information of Filipino

fisherfolk, fisheries owners/operators, entrepreneurs, manufacturers and researchers, when disclosure of such information will injure the competitiveness or viability of domestic fisheries." [52]

In line with these, Section 16 of FAO No. 266 requires accredited private service providers of the ALC and ERS devices to execute non-disclosure agreements with BFAR, which should include standards of encryption and storage, and other safeguards to protect sensitive technical information. This provision further requires the inclusion of a clause holding the private service provider accountable in case of breach, unauthorized disclosure, and failure or malfunctioning of the ALC device.

To be sure, the significance of the protection granted to sensitive technical information should not be undermined. In fact, this is the underlying parameter that should govern BFAR's implementation of its MCS system. I respectfully submit that this should bear heavily in the determination of whether FAO No. 266 is valid.

Here, despite the clear and unequivocal policy to safeguard information gathered from a vessel's fishing activity, BFAR did not operationalize these measures. Worse, it was sufficiently established before the lower court, in the crucible of trial, that these measures were rendered meaningless by BFAR's actual practices, having outsourced to a private entity the handling of sensitive technical information gathered from the VMS.

To recall, it was surfaced during trial that the generation and storage of VMS data is being managed by BFAR in partnership with SRT Marine Systems, a foreign private company with no Filipino employee. The trial court likewise aptly observed that on BFAR's end, one Maria Joy Mabanglo (Mabanglo), who was a mere contractual employee of BFAR, admitted during her testimony that she and her team (also contractual employees) have custody of the VMS data, but that they did not sign any non-disclosure agreement for their contract with BFAR. [53] Mabanglo's testimony went as follows:

Q

You said that you are a Computer Maintenance Technologist III of the Fisheries Information Management Center or FIMC of the BFAR, right?

A

Yes, sir.

Q

And you also said that you are the Operator Team Leader of the Vessel Monitoring System (VMS) Operators of the FIMC, right?

A

Yes, sir.

Q

Now as such you said that you monitored and maintained the networks, security update, and the computer systems of BFAR-VMS, right?

A

Yes, sir.

....

Q

Okay, this is my question, this security update is necessary because you handled confidential and sensitive information, right?

A

Yes, sir.

Q

You also said that you supervised VMS operations and maintaining and guide the everyday work of the VMS operators on the watch floor, right?

A

Yes, sir.

....

Q

Okay. In supervising other VMS operators, you were the Operator Team Leader of VMS operators, right?

A

Yes, sir.

....

Q

And because of your work Ms. Mabanglo you have access to the data base containing confidential and sensitive information, right?

A

Yes, sir.

Q

Okay. And like you the other VMS Operators have also access to the data base containing confidential and sensitive information, right?

A

Yes, sir.

Q

Okay. In addition Ms. Mabanglo, you said that you also provide technical assistance to VMS users [and] respond to VMS related inquiries from vessel operators. You also provide VMS trainings for VMS operators and VMS orientations to vessel captains and fishing company liaison officers, right?

A

Yes, sir.

....

Q

Okay. Despite your big and indispensable work with access to confidential and sensitive information, do you know Ms. Mabanglo that you are not an employee of BFAR?

A

Yes, sir.

Q

You are just hired by BFAR on a contract basis, right?

A

Yes, sir.

....

Q

Aside from you Ms. Mabanglo, are there other contractual workers who are also VMS operators?

A

Yes, sir.

Q

How many?

A

Eight (8) operators, sir.

Q

So Ms. Mabanglo, VMS operators who are also contractual workers of BFAR like you also have access to the sensitive and confidential information generated from the VMS and ERS, right?

A

Yes, sir.

....

Q

Aside from your contract employment, did you sign any other document with BFAR relative to your contractual employment?

A

No, sir, only the BFAR contract.[54] (Emphasis supplied)

Furthermore, FAO No. 266 itself provides for permissible disclosures of sensitive technical information under Section 23, to wit: (a) when officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense; (b) when requested by the flag coastal or port state for its own investigation or traceability; or (c) other analogous circumstances. The assailed regulation, however, does not

account for the type of information to be disclosed. The Republic also did not mention specific limitations to data sharing agreements that BFAR may enter into with other entities. The lack of clear parameters as to the availability of fisheries data to entities other than the regulatory authority further casts doubt on the capacity of BFAR to secure these information against misuse and abuse.

Inasmuch as FAO No. 266 demands transparency from fishing vessel operators, this should not be at the expense of allowing unbridled access to proprietary information, which are essential to the continued operations of commercial fishing vessels. If the Court were to hold otherwise, this may result in driving out the profitability of commercial fishing operations. In the end, this only disincentivizes the sharing of information to regulatory authorities, especially among legitimate operators. The absence of adequate measures to guarantee the security of proprietary information gathered from fishing vessels via the ERS does not therefore rationally further the claimed interest of managing our fishery resources.

D.

Expanding the requirement of ERS to all commercial fishing vessels violates the Equal Protection Clause of the Constitution

I agree with the ponencia that FAO No. 266 violates the equal protection clause of the Constitution. Differently from the ponencia, however, apart from a finding of under inclusiveness, it is also my position that the classification created under FAO No. 266 suffers from over inclusiveness.

Indeed, there is an obvious distinction between a municipal fishing vessel and a commercial fishing vessel. As defined under the Fisheries Code, municipal fishing "refers to fishing within municipal waters using fishing vessels of three (3) gross tons or less, or fishing not requiring the use of fishing vessels,"[55] while commercial fishing is "the taking of fishery species by passive or active gear for trade, business or profit beyond subsistence or sports fishing." [56] It may be further classified into small, medium, and large-scale, depending on the size of the fishing vessel.[57]

There is also the difference as regards the jurisdiction under which the regulation of the fishing vessel resides, i.e., municipal fishing vessels being regulated by the local government units as expressed under the Fisheries Code and Executive Order No. 305,[58] series of 2004.

I submit that to draw a classification and criteria from the above definitions alone in determining as to which fishing vessels must be equipped with a VMS and ERS does not make such classification valid. To my mind, when the regulation provides a blanket obligation and prohibition to all commercial fishing vessels solely by virtue of their differences with municipal fishing vessels, the classification being established offends the equal protection clause of the Constitution.

It is simply erroneous to assume that all commercial fishers are similarly situated. On the contrary, the species or kind of fish they catch and whether they are engaged in the business of exportation are significant considerations, as well. These are real and substantial distinctions among commercial fishing vessels that must define the classification under FAO No. 266. A look at the history of how FAO No. 266 evolved would show that these distinctions I mentioned were once recognized and determinative.

In 2012, the BFAR issued FAO No. 241.[59] The Whereas Clauses of FAO No. 241 referenced the tuna RFMOs that the Philippines joined. Pursuant to this, FAO No. 241 provided that the VMS shall apply to all licensed Philippine-flagged commercial fishing vessels authorized by BFAR to operate in the high seas and those fishing vessels with access rights to fish in other countries' EEZs. It further provided that the VMS requirement shall first be applied to- all Philippine-flagged vessels, authorized to conduct tuna fishing in the high seas or with access

rights to fish in other countries' EEZs. Notably, FAO No. 241 did not require round-the-clock monitoring of fishing vessels. It did not even define what VMM and VMS were, nor did it require the electronic reporting of catch data. It merely stated that covered fishing vessels shall keep their ALC activated at all times, from the time that these fishing vessels leave port. The vessel must also report to the Philippine Fisheries Monitoring Center at least six positions or more per day or from six positions to 24 positions per day.

In 2018, BFAR issued FAO No. 260, the precursor of FAO No. 266. Similar to FAO No. 241, FAO No. 260 referenced the various tuna RFMOs to which the Philippine belongs. It also identically mandated that the VMS shall principally apply to all licensed Philippine-flagged commercial fishing vessels authorized by BFAR to operate in the high seas and those fishing vessels with access rights to fish in other countries' EEZs. For those operating within Philippine waters, the implementation of the VMS shall be in phases.

As with FAO No. 241, which prioritized tuna, FAO No. 260 limited its scope to vessels commercially engaged in fishing straddling and highly migratory fish stocks. But strikingly unlike FAO No. 241, FAO No. 260 defined what constitutes as VMM and VMS,[60] and directed covered vessels to turn on their VMM and ERS devices at all times. Each VMS must transmit to the Fisheries Monitoring Center the position, course, and speed of the vessels at any given time. ERS devices must also record and transmit catch data to BFAR in near real-time separately or simultaneously to the transmissions of location data.

As has already been stated, FAO No. 260 was later amended by FAO No. 266. Once again, FAO No. 266 references the various tuna RFMOs to which the Philippine belongs. It essentially replicates the requirements on real-time VMS and ERS, but this time, there is no more distinction as to the kinds of fishes being caught.

The foregoing history of the issued FAOs reveals that the kinds of fishes and the fishing locations did, in fact, matter. The FAOs previous to FAO No. 266 were concerned with so-called transboundary fishes and the regulation of Philippine-flagged fishing vessels who fish for these species outside Philippine waters. The rationale for these limited distinctions is not hard to fathom as the fishes and the fishing grounds are, in a nutshell, indubitably shared resources over which the Philippines has no exclusive control or right to exploit.

As discussed earlier, the Republic maintains that FAO No. 266 is meant for a host of other legitimate and reasonable objectives as set forth in Section 1 thereof, chief of which are to track fishing behavior for scientific research and data, and to gather data on fishing effort and catch data for fisheries management measures. However, it cannot also be denied that the strongest impetus for the drastic amendment introduced by FAO No. 266 has really something to do with IUUF—that is, specifically, to heed the strong urging from the European Union that 100% of the catch the country exports can be certified as not having been caught from IUUF. This, supposedly and as the Republic adamantly maintains, can only be ascertained by having VMS and ERS installed in 100% of commercial fishing vessels.[61]

In reality, therefore, whether or not a commercial fishing vessel is engaged in the business of exportation also becomes a real and substantial distinction in the classification under FAO No. 266. I submit that this should be so since the business entails transshipment, or "the transfer of all or any fish or fishery product from one fishing vessel to another." [62] In such cases, compliance with the VMS and ERS measures of the port state would come into play. For commercial fishing vessels which do not engage in exportation, on the other hand, it would serve no purpose that they be burdened with the requirements on real-time VMS and ERS.

Clearly then, the classification created under FAO No. 266 results in an overinclusiveness as it includes within its scope commercial fishing vessels which are not necessary to the accomplishment of the legislative purpose.[63] To put it simply, not every commercial fishing vessel is engaged in fishing for transboundary fishes. Not every commercial fishing vessel is engaged in fishing in the high seas or in other countries' EEZs. Not every

commercial fishing vessel is engaged in exportation. These distinctions cannot simply be ignored because the burdens to be imposed on all commercial fishing vessels, as discussed earlier, are hard to be taken lightly.

On this score, Royale Fishing, et al.'s statement during the Oral Arguments holds sway:

Respondents only catch galunggong and small pelagic fish in Philippine waters, to be sold in local fishports and talipapas, and not for export. They catch these species only in shallower waters. But, their sector represents the backbone of capture fisheries and contributes significantly to domestic food security. We must distinguish them from tuna fishermen, who catch oceanic tuna mainly for export. Tuna fishermen operate primarily in deeper waters and migratory pathways and these pathways traverse international borders, underscoring the necessity for monitoring measures, as a tuna caught in one country can be transshipped in another country, processed in a third country, and exported to a fourth country.[64]

Even if the Court were to accept as true that the underlying legislative consideration has nothing to do with the kind of fishes caught and the business of exportation, but largely on the abatement of IUUF, FAO No. 266 would still suffer from the vice of underinclusiveness—or, when the classification fails to include subjects within the scope of legislation which are necessary to the accomplishment of the legislative purpose.[65]

The non-inclusion of municipal fishing vessels in the classification makes FAO No. 266 underinclusive. In the DA-BFAR Fisheries Law Enforcement Operations Action Plan, it was mentioned that BFAR filed 1,026 fisheries-related cases from 2015 to 2017. Most of the apprehensions for these fisheries law violations occurred in municipal waters.[66]

Furthermore, the Philippine Statistics Authority (PSA) reports in 2019 that the final consensus estimates for illegal fish caught by municipal fishers ranged from 26% to 42% of the 2019 municipal marine capture fisheries production. This translates to 256,721 to 402,035 metric tons (MT) of fish lost to illegal fishing in municipal waters, valued at PHP 24.10 to 37.75 billion. On the other hand, the illegal catch from commercial fishing operations was estimated to be equivalent to 28% to 39% of the 2019 commercial fisheries production reported by the PSA, or 259,316 to 364,197 MT valued at PHP 17.67 to 24.82 billion.[67]

In other words, therefore, despite the fact that IUUF happens more in municipal waters and committed more frequently by municipal fishing vessels, the latter were excluded from the coverage of FAO No. 266. This exclusion renders the accomplishment of the legislative purpose of the regulation illusory.

The Republic insists, however, that municipal fishing vessels are excluded from the coverage of FAO No. 266 because the authority over them lies with the local government units. But this is refuted by the ponencia when it aptly holds:

Harmonizing Sections 14, 16, 65, and 119 of Republic Act No. 8550, as amended, it is clear that it is the DA and the BFAR which are vested with the power to promulgate vessel monitoring measures. What they are not empowered to do, under Section 65, is to enforce these measures in municipal waters as it is the concerned LGU which is empowered to do so. Nevertheless, the determination of the policy regarding VMM remains with them.[68]

Verily, the legislature in addressing an issue must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded.[69] Hence, the treatment by the judiciary has generally been to accord considerable deference to the legislative judgment.[70] The limitation, however, is that for as long as the bounds of reasonable choice are not exceeded.[71] The balance is, as well, anchored on the need to protect an individual's or a group's right to equality, thereby warranting a judicial inquiry into the legislature's conduct.[72] As mentioned earlier, the deference alluded to in applying the rational basis test should not translate into a mere cursory or perfunctory review from the Court; otherwise it will amount to a "minimal scrutiny in theory, but

virtually no scrutiny in fact.”[73]

In the application of an effective rational basis test, the two-pronged analysis through the well-settled framework identified by United States Supreme Court Justice Lewis F. Powell, Jr. is illuminating:

There are two variables in this analysis—the purpose and the means. Examination of the purpose involves both identification of the purpose and, in some instances, evaluating the legitimacy and importance of the purpose. Examination of the means involves at least a cursory examination of the overinclusiveness or underinclusiveness of the means in relation to the ends. In some instances[,] the analysis considers the impact of the classification on groups or interests, and whether alternative means, less harmful to the groups or interests, might be available to accomplish the same purpose.[74] (Emphasis and underscoring supplied.)

III.

BFAR failed to comply with the requirements for formulating rules and regulations

Had the requirements for the issuance of any regulation under the Fisheries Code been limited to notice and hearing, Royale Fishing, et al.'s arguments on public consultation would not merit much weight. However, the issuance of rules and regulations pursuant to the Fisheries Code is governed by specific guidelines.

Rule 119.2 of the Implementing Rules and Regulations (IRR) of the Fisheries Code, as amended,[75] explicitly states that the determination of the appropriate VMM technology and the corresponding schedule for its implementation shall be determined upon consultation with stakeholders. Such consultation shall follow Rule 65.2.

In turn, Rule 65.2 of the IRR of the Fisheries Code, as amended, requires that the formulation of rules and regulations should be based on scientific studies. In conducting these studies, this provision explicitly requires prior notification to stakeholders by at least 15 days prior to the consultation. The stakeholders must also be informed of the duration and experts who will conduct the study.

Here, it is not disputed that there is no such study. The Republic even admits that BFAR's basis for FAO No. 266, a regulation issued in 2020, was the 2006 Report of the Expert Consultation on the Use of Vessel Monitoring Systems and Satellites for Fisheries Monitoring, Control and Surveillance (Report of the Expert Consultation). Such report was the product of consultations held at the Food and Agriculture Organization of the United Nations in Rome, Italy from October 24 to 26, 2006.[76]

As exhaustively discussed earlier, several FAOs had been issued prior to FAO No. 266 and several years after the Food and Agriculture Organization of the United Nations came out with the Report of the Expert Consultation. The earliest FAO requiring the installation of the VMS, i.e., FAO No. 241, was issued in 2012, or 6 years after such study. Granted that the Fisheries Code IRR had not yet been in effect at the time FAO No. 241 was issued,[77] it should not escape the attention of the Court that the succeeding FAO issued in 2018, i.e., FAO No. 260 expanding the VMS requirement to those catching straddling and highly migratory fish stocks, does not appear to have been accompanied by any such study as well.

As well, to my mind, the Report of the Expert Consultation focused on the international and national legal framework that could serve as the basis for the requirement of the VMS. It lacks specifics on the implementation of this equipment to fishing vessels, much less to the adoption of the VMS technology for all commercial fishing vessels. So, too, a study conducted 14 years prior to the assailed regulation is hardly the scientific study contemplated by the Fisheries Code IRR. There are developments in fisheries, most especially in technology, that took place during the intervening period, which should have merited more than merely taking a foreign report at its face value.

Had BFAR conducted the appropriate studies for the roll-out of the VMS and ERS to all commercial fishing vessels, it would have made the necessary adjustments to the regulation. Neither did it appear that BFAR's issuance of FAO No. 266 was guided by its experience in implementing the prior FAOs. For these reasons, I agree with the ponencia that BFAR failed to observe due process in issuing the assailed regulation.

IV.

Having expounded on my position as regards thy primary issues bearing on the validity of the assailed regulation, I respectfully offer my thoughts on the other issues that were likewise taken up during the Oral Arguments.

Rule II Section 10 of the Rules of Procedure for Environmental Cases regarding the prohibition against an injunctive writ does not apply

The Republic claims that the trial court erred in issuing the injunctive writ against the implementation of FAO No. 266 because the Rules of Procedure for Environmental Cases (RPEC) vests only in the Supreme Court the authority to issue a Temporary Restraining Order or Writ of Preliminary Injunction against the lawful actions of government agencies to enforce environmental laws. This case being an environmental case, the trial court did not have authority to enjoin BFAR from implementing FAO No. 266.[78]

I disagree.

Rule 1, Section 2 of the RPEC clearly provides that it 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. While this case touches upon environmental concerns, the crux of the controversy is the constitutionality of a regulation issued by the government, through BFAR. In other words, when Royale Fishing, et al. filed their petition for declaratory relief before the Regional Trial Court (RTC), their cause of action was neither for the enforcement nor for the prosecution of violation of any environmental law or regulation.

In *Social Justice Society (SJS) Officers v. Mayor Lim*,^[79] the Court held that the scope of the RPEC is limited. The Court thusly concluded that while there were allegations of violations of environmental laws in the petitions therein, those only served as collateral attacks that would support the other position of the therein petitioners—the protection of the right to life, security, and safety.

Furthermore, in *Zabal v. President Duterte*,^[80] the Court shot down the argument of the government that the petition was in the nature of a Strategic Lawsuit Against Public Participation (SLAPP) under Rule 6 of the RPEC, or a legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. The Court explained that while the case touches on the environmental issues in Boracay, the ultimate issue for resolution was the constitutionality of Proclamation No. 475. The Court then concluded that the procedure in the treatment of a defense of SLAPP provided for under Rule 6 of the RPEC should not be made to apply.

Here, while there were allegations of violations of the Fisheries Code in the petition for declaratory relief before the RTC, particularly on the provisions pertaining to the scope of the regulation and the need for public consultations, these were merely secondary to the core allegation that the assailed regulation violates the Constitution. Clearly, Royale Fishing, et al.'s petition for declaratory relief was not in contemplation of any of the above-cited objectives of the RPEC, and as such, it is not covered by the prohibition that, except for the Supreme Court, no court may enjoin the lawful actions of government agencies that enforce environmental laws or prevent

violations thereof.

What finds application, on the contrary, is Section 134 of the Fisheries Code, as amended, which prohibits the ex parte issuance of an injunctive writ against the DA and BFAR in the exercise of its regulatory functions. There being no dispute that the trial court conducted a hearing, it did not gravely abuse its discretion in enjoining the implementation of FAO No. 266.

The intervention of Oceana, et al. in G.R. No. 257049 is improper

As for the issue on the propriety of petitioners Oceana Philippines International (Oceana Philippines), Pablo R. Rosales (Rosales), and Ronaldo P. Reyes's (Reyes) (collectively, Oceana, et al.) intervention in this case, I agree in part with the disposition in the ponencia as to the limitation by which the Court may entertain the appeal of Oceana, et al. I agree that following *Foster-Gallego v. Spouses Galang*[81] (*Foster-Gallego*), the Court may only look into the issue as to whether the RTC correctly denied the motion-for-intervention of Oceana, et al. In contrast with the ponencia, however, I submit that, ultimately, the RTC correctly denied the motion for intervention of Oceana, et al.

To recall, Oceana, et al.'s intervention was denied in the May 24, 2021 Order, and their motion for reconsideration from this Order was again denied in the Order dated June 23, 2021 of the RTC, by which time, however, the merits of the case had already been decided by the RTC in its assailed June 1, 2021 Decision. Meanwhile, Oceana, et al. received the denial of their motion for reconsideration on July 8, 2021. From the denial of their intervention, Oceana, et al. directly filed a Rule 45 petition with the Court, assailing not only the denial, but primarily the merits of the trial court's decision in striking down FAO No. 266.

An intervention is merely collateral or ancillary to the principal action. Hence, as a rule, when the RTC decided the petition for declaratory relief, the right to intervene of any party had expired. However, as aptly explained by the ponencia, the tight timeline that transpired in the proceedings below lends justification into relaxing this rule. As the Court held in *Foster-Gallego*, where the lower court's denial of a motion for intervention amounts to a final order, as when the denial leaves the intervenor without further remedy or resort to judicial relief, an appeal is the proper remedy. That said, it was likewise emphasized by the Court that a prospective intervenor's right to appeal applies only to the denial of their intervention. Not being a party to the case, a person whose intervention the court denied has no standing to question the decision of the court.

Thus, here, it remains that Oceana, et al. have no legal standing to assail the decision of the RTC. Even if the Court were to consider their present petition as an appeal from the denial of their intervention, the Court can only resolve the issue on whether the RTC correctly denied the motion-for-intervention of Oceana, et al. On this score, I demur from the conclusion of the ponencia that the RTC erred in denying the motion-for-intervention of Oceana, et al.

Firstly, I agree with the ponencia that the RPEC does not apply in this case since the crux of the controversy is the constitutionality of a regulation by BFAR and not the enforcement or prosecution of violation of any environmental law or regulation. As such, considering that Oceana, et al. anchored their intervention on the RPEC, on their claim of violation of their right to a balanced and healthful ecology, and their representation of third parties, the RTC correctly disallowed their intervention.

The ponencia, however, rules that the intervention of Oceana, et al. should have prospered under Rule 19, Section 1 of the Rules of Court, on the grounds that Oceana, et al. have legal interest to intervene in the main case; that the intervention would not have had unduly delayed or prejudiced the adjudication of the original parties' rights; and that intervention was the most appropriate remedy available to the intervenor.[82]

I disagree.

The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court hearing the case. This discretion, once exercised, is not reviewable by certiorari or mandamus save in instances where such discretion is exercised in an arbitrary or capricious manner. *Oceana, et al.* have not shown that the RTC acted capriciously or arbitrarily. The RTC had valid reasons to deny *Oceana, et al.*'s intervention.[83]

The RTC relevantly held that the issues of the case would show that *Oceana, et al.* cannot be considered real parties with legal interests in the subject matter of the litigation. It observed that the petition involved the constitutionality of an administrative order issued and implemented by the agencies of the government. Hence, if there was a party who could best defend its position on the matter, it was the government agency involved in the issuance of the said order.[84] At the same time, the RTC found that the proposed intervention will only cause further delay to the proceedings. *Oceana Philippines* was just one of the many NGOs whose advocacies include the conservation of marine resources, while *Rosales and Reyes* were just two of the thousands of municipal fishermen in the country. The RTC opined, therefore, that there was a high probability that other entities of similar standing as *Oceana, et al.*, would also intervene if they were allowed by the court. This would have surely caused undue delay to the proceedings, prolonged the adjudication of the rights of the original parties, and complicated the issues further.[85]

Indeed, an intervention is not a matter of absolute right. The intervenor must establish an actual and material interest, "a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral." [86] As well, the delay and prejudice to the original parties should also be taken into consideration. Both the interest and the consequent delay to the original parties must be considered; neither is more important than the other.[87]

Here, there is no showing that the interest of *Oceana, et al.* is actual and material, such that they will gain or lose by the direct legal operation of the judgment. On the contrary, their interest in the merits of this case is sufficiently represented by the Office of the Solicitor General (OSG), an indispensable party in any action involving the validity of any rule or regulation.[88] During the oral arguments, as well, the OSG confirmed that *Oceana, et al.* are arguing on the same Constitutional bases that the OSG is also raising before the Court. Simply put, listening to the OSG meant listening to *Oceana, et al.*[89] Thus, accommodating the intervention of *Oceana, et al.* would not have served any added benefit.

V.

To be clear, striking down the assailed regulation is not meant to favor commercial fishing operators nor to diminish the efforts of the government in marine conservation as enjoined by the Constitution and international obligations. However, the Court must not lose sight of the significance of the statutorily recognized proprietary rights of those engaged in this commercial venture. And, while it is true that property rights hold the least weight in the scale of values, disregarding this right altogether by merely echoing the dictum that property rights give way to police power, is effectively an abdication of the Court's power of judicial review. Cases of first impression such as this merit no less than the Court's full appreciation of its nuances.

All told, I VOTE to declare FAO No. 266 invalid.

[1] Ponencia, pp. 80-81.

[2] An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic

Resources Integrating All Laws Pertinent Thereto, and for Other Purposes, approved on February 25, 1998.

[3] An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as "The Philippine Fisheries Code of 1998," and for Other Purposes, February 27, 2015.

[4] Valmonte v. Belmonte, Jr., 252 Phil. 264, 275 (1989) [Per J. Cortes, En Banc].

[5] Id.

[6] See Sps. Hing v. Choachuy, Sr., 712 Phil. 337 (2013) [Per J. Del Castillo, Second Division]; In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon, 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, En Banc]; Ople v. Torres, 354 Phil. 948 (1998) [Per J. Puno, En Banc].

[7] CONST. (1987), art. II, sec. 16, art. XII, sec. 2.

[8] UNCLOS, Part VII, sec. 1, art. 87 provides that the high seas are open to all States, whether coastal or land-locked. The freedoms available to all States in the high seas shall therefore be exercised by all with due regard for the interests of other States and under the conditions laid down by the UNCLOS and by other rules of international law.

[9] Issued: September 5, 2000.

[10] N.B. In the Technical Consultation of International Experts in MCS for Fishery Management in 1981 in Rome, which was adopted by our Fisheries Code, the agreed upon definitions of MCS are as follows:

[(i)] Monitoring involves the collection, measurement, and analysis of fishing activity data on Catch, species composition, effort, discards, area of operations and so on, which is meant to assist fishery managers to arrive at management decisions[;]

....

[(ii)] Control involves the specifications of the terms and conditions under which resources can be harvested, and normally contained in national legislations, and provides basis on which management arrangements are enforced[; and]

[(iii)] Surveillance involves checking and supervision of fishing activity to ensure national legislations and terms of access and management measures are observed. This activity is crucial to ensure that the resources are not overexploited, poaching is minimized and management arrangements are implemented. (Joeren S. Yleaña & Pierre Easter L. Velasco, Monitoring, Control and Surveillance (MCS) in Southeast Asia: Review of the Establishment of Regional MCS Network, Fish for the People, available at <<https://repository.seafdec.org/bitstream/handle/20.500.12066/117/Fish%20for%20the%20People,%202012,%2010,%201,%207-12.pdf?sequence=1>> (last accessed on January 21, 2026); See also Republic Act No. 8550 (1998), sec. 4 (55).

[11] Republic Act No. 8550, sec. 14.

[12] See Republic Act No. 8550, as amended, secs. 38, 65; FAO No. 196, series of 2000, Guidelines on the Creation and Implementation of Fisheries and Aquatic Resources Management Councils (FARMCs), approved on January 21, 2000; Yleaña & Velasco, *supra* note 10.

[13] See rollo (G.R. No. 256282), pp. 690-691, Commercial Fishing Vessel/Gear License. See also TSN, Oral Arguments, October 10, 2023, pp. 10-11.

[14] Republic Act No. 8550, sec 2(g).

[15] See FAO No. 241, series of 2012.

[16] Rollo (G.R. No. 256282), pp. 2121-2126, Memorandum dated January 10, 2024 of the Republic; N.B. Police power is referred to as "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same." *Carlos Superdrug Corp. v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007) [Per J. Azcuna, En Banc]. (Citation omitted)

[17] *Ichong v. Hernandez and Sarmiento*, 101 Phil. 1155, 1165-1166 (1957) [Per J. Labrador, En Banc].

[18] *Id.* at 1166.

[19] *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals, Cebu City*, 868 Phil. 93, 116 (2020) [Per J. Leonen, En Banc].

[20] Thomas B. Nachbar, *The Rationality of Rational Basis Review*, 102 VA. L. REV. 1627, 1629 (2016). (Citations omitted)

[21] See *Ponencia*, pp. 55-56.

[22] *Supra* note 17.

[23] *Id.* at 1165.

[24] *Id.* at 1166.

[25] See TSN, Oral Arguments, November 21, 2023, pp. 33-35.

[26] See *id.* at 33, TSN, Oral Arguments, November 21, 2023; rollo (G.R. No. 256282), pp. 2115-2116, 2133-2144, Memorandum dated January 10, 2024 of the Republic.

[27] *Id.* at 32-33, 42, TSN, Oral Arguments, November 21, 2023.

[28] *Id.* at 32-33.

[29] *Id.* at 35.

[30] Rollo (G.R. No. 256282), pp. 2257-2258, Letter of Directorate-General For Maritime Affairs and Fisheries, European Commission.

[31] TSN, Oral Arguments, October 10, 2023, p. 51.

[32] *Ponencia*, p. 79.

[33] See TSN, Oral Arguments, October 10, 2023, pp. 30-40.

[34] FAO No. 266, series of 2020, sec. 2(a); See rollo (G.R. No. 256282), p. 2262, Vessel Monitoring System Requirement for Proper Fisheries Management in the Philippines by Marlo Demo-os, Joem Moreno and Renie Siocon.

[35] FAO No. 266, *id.* at sec. 4.

[36] FAO No. 198-1, series of 2018, sec. 31.

[37] Rollo (G.R. 256282), p. 2137, Memorandum dated January 10, 2024 of the Republic.

[38] *Id.* at 2170, Vessel Monitoring System Requirement for Proper Fisheries Management in the Philippines by Marlo Demo-os, Joem Moreno and Renie Siocon.

[39] Id. at 2279-2283, VMS Notification Status.

[40] TSN, Oral Arguments, November 21, 2023, pp. 77-78.

[41] Id. at 129. See also id. at. 127-128:

CHIEF JUSTICE GESMUNDO:

Okay. Can the VMS detect if cyanide fishing was resorted to?

SOLICITOR GENERAL GUEVARRA:

No, Your Honor.

CHIEF JUSTICE GESMUNDO:

Can the VMS determine if the fishing vessels accurately reported what they caught?

SOLICITOR GENERAL GUEVARRA:

That is possible, Your Honor. Because there would be a system of validation.

....

CHIEF JUSTICE GESMUNDO:

Can the VMS determine overfishing?

SOLICITOR GENERAL GUEVARRA:

The matter of overfishing is the subject of studies based on the data collected through the VMS.

CHIEF JUSTICE GESMUNDO:

But the gadget cannot detect overfishing?

SOLICITOR GENERAL GUEVARRA:

Definitely not, Your Honor. (Emphasis in the original)

[42] Fisheries Code, as amended by Republic Act No. 10654, sec. 38.

[43] See FAO No. 268, series of 2023, Rules and Regulations Governing the Catch Certification or Documentation Scheme for Fish and Fishery Products Intended for Export that Require Catch Certificates.

[44] FAO No. 260, series of 2018, Rules and Regulations on the Implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Commercial Philippine Flagged Fishing Vessels Targeting Straddling and Highly Migratory Fish Stocks; N.B. Straddling stocks refer to species that migrate or occur in more than one Exclusive Economic Zone (EEZ), while highly migratory fish stocks are those that migrate across international waters, usually referring to tuna and tuna-like species. (Getrude Pascal Migodela, Towards Management of Straddling and Highly Migratory Fish Stocks: A Perspective from the United Republic of Tanzania, available at https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/gertrude_research_thesis_15_december_2017_final.pdf [last accessed on January 21, 2026]).

[45] See TSN, Oral Arguments, November 21, 2023, pp. 57-133:

ASSOCIATE JUSTICE [AMY C.] LAZARO-JAVIER:

. . . Is there some sharing assistance or sharing of data between BFAR and the Philippine Coast Guard for purposes of conserving and managing our fisheries resources through the use of VMS?

SOLICITOR GENERAL GUEVARRA:

Not necessarily through the use of the VMS, Your Honor. The Philippine Coast Guard provides the BFAR with data on apprehensions in Philippine waters but there is no qualification that the apprehensions were done

with the help of the VMS. . .

CHIEF JUSTICE GESMUNDO:

Since you, you have the statistics on how many apprehensions for violations of the Fisheries Code was effected since the time you required the use of VMS, you have the data?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor. But we cannot really say that the apprehensions, because there is no qualification, that the apprehension was through the assistance of the VMS. (Emphasis supplied)

[46] See Kamal Azmi, et. al., Towards responsible transparency: understanding why fishers are cautious about sharing data, A report of a workshop on fisheries data confidentiality, held from 30 June to 15 July 2022, organized by the Australian National Centre for Ocean Resources and Security (ANCORS) and Global Fishing Watch, available at <https://meetings.wcpfc.int/node/18093> (last accessed on January 21, 2026).

[47] Rollo (G.R. No. 256282), pp. 1892-1903, Memorandum dated December 21, 2023 of the Royale Fishing, et al.

[48] Azmi, et al., supra note 46.

[49] Ponencia, pp. 44-54.

[50] Formerly, Section 121 of the Fisheries Code; See Republic Act No. 10654, sec. 20.

[51] Id.

[52] Emphasis supplied.

[53] Rollo (G.R. No. 256282), p. 275, RTC Decision dated June 1, 2021, citing TSN, Maria Joy Mabanglo, January 13, 2021, rollo (G.R. No. 256282), pp. 1759-1763.

[54] Id. at 1757-1763, TSN, Maria Joy Mabanglo, January 13, 2021.

[55] Republic Act No. 8550, sec. 4(57).

[56] Id. at sec. 4(10).

[57] Id.

[58] Devolving to Municipal and City Governments the Registration of Fishing Vessels Three (3) Gross Tonnage and Below, adopted on April 2, 2004.

[59] Regulations and Implementation of the Vessel Monitoring System (VMS) in the High Seas.

[60] FAO No. 260, sec. 4, provides:

w.

Vessel Monitoring Measures (VMM) - a method or a system used to track and monitor the position, course and speed of the vessels at any given time for the purpose of management of fishing effort and fisheries resources and for traceability. This shall cover VMS and other measures.

x.

Vessel Monitoring System (VMS) - a satellite-based system used to track and monitor the position, course and speed of tile vessels at any given time for the purpose of management of fishing effort and fisheries resources and traceability.

[61] See TSN, Oral Arguments, October 10, 2023, pp. 31, 51-52.

[62] Republic Act No. 8550, as amended by Republic Act No. 10654, sec. 4(85).

[63] See David M. Treiman, Equal Protection and Fundamental Rights-A Judicial Shell Game, 15 TULSA L.J. 183, 187 (1980).

[64] TSN, Oral Arguments, October 10, 2023, p. 17.

[65] See Treiman, *supra* note 63.

[66] Rollo (G.R. No. 256282), pp. 2246-2247, Technical Paper on IUUFF in the Philippines submitted by Rollan C. Geronimo, a Fisheries Analyst for Applied Research from an international non-profit organization, Global Fishing Watch, to the OSG and the DA-BFAR.

[67] *Id.* at 2248.

[68] Ponencia, p. 71.

[69] See C.J. Puno, Dissenting Opinion in *Quinto v. COMELEC*, 621 Phil. 236, 354 (2009) [Per J. Nachura, En Banc].

[70] *Id.*

[71] *Id.*

[72] See Treiman, *supra* note 63, at 188.

[73] *Id.* at 189, citing Gunther, The Supreme Court 1971 Term-Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 HARV. L. REV. 1, 8 (1972) E.g., *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. at 320-21 (Marshall, J., dissenting).

[74] *Id.* at 188.

[75] DA Administrative Order No. 10, series of 2015, The Implementing Rules and Regulations of Republic Act 8550 as Amended by Republic Act No. 10654.

[76] Rollo (G.R. 256282), pp. 2148-2149, Memorandum dated January 10, 2024 of the Republic.

[77] Issued on September 22, 2015.

[78] Rollo (G.R. 256282); p. 2105-2108, Memorandum of the Republic dated January 10, 2024.

[79] 748 Phil. 25, 86 (2014) [Per J. Perez, En Banc].

[80] 846 Phil. 743 (2019) [Per J. Del Castillo, En Banc].

[81] 479 Phil. 148 (2004) [Per J. Carpio, First Division].

[82] See Ponencia, pp. 41-44, citing *Sula v. Commission on Elections*, 932 Phil. 1007, 1017-1018 (2023) [Per J. Leonen, En Banc].

[83] See *Foster-Gallego v. Spouses Galang*, *supra* note 81, at 164.

[84] See Rollo (G.R. No. 257049), p. 81, RTC Order dated May 25, 2021.

[85] *Id.* at 82.

[86] *Hon. Executive Secretary v. Northeast Freight Forwarders, Inc.*, 600 Phil. 789, 799 (2009) [Per J. Chico-Nazario, Third Division].

[87] Id. at 799-800.

[88] Administrative Code of 1987, Book IV, Title III, Chapter 12, section 35(3).

[89] TSN, Oral Arguments, November 21, 2023, p. 66.

SEPARATE CONCURRING OPINION

HERNANDO, J.:

The consolidated Petitions for Certiorari^[1] seek to annul and set aside the rulings of Branch 170, Regional Trial Court, Malabon City (RTC), which, after issuing a Writ of Preliminary Injunction (WPI) to temporarily restrain the enforcement of Fisheries Administrative Order No. 266 (FAO No. 266), Series of 2020, subsequently rendered a judgment declaring the said administrative issuance unconstitutional and void for being violative of constitutional guarantees.

The trial court found that the continuous and real time recording of Royale Fishing et al.'s trade secrets, through the installation in all commercial fishing vessels and catcher fishing vessels within its scope, of a Vessel Monitoring System (VMS), a system that tracks, monitors, and manages fishing vessels, and the Electronic Reporting System (ERS), which records, reports, processes, stores, and sends fisheries data, as mandated by FAO No. 266, infringes on their constitutional right to privacy. Moreover, the absence of a scientific study and prior consultation with the stakeholders to support the formulation and implementation of FAO No. 266 violates Royale Fishing et al.'s right to due process. Lastly, the exclusion of municipal fishing vessels from the coverage of FAO No. 266 transgressed Royale Fishing et al.'s right to equal protection of the laws enshrined in the Constitution. The RTC eventually declared FAO No. 266 as unconstitutional and made permanent the injunction it earlier issued.^[2]

The ponencia dismisses the petition in G.R. No. 256282 for being moot,^[3] while it denies the petition in G.R. No. 256559, and declares FAO No. 266 unconstitutional.^[4] Finally, the ponencia partly grants the petition filed by Oceana Philippines International, et al. in G.R. No. 257049, finding that the RTC erred in denying the Motion for Intervention.^[5]

I concur with the pronouncements of the ponencia but I am impelled to share my views and perspectives relevant to the resolution of the issues presented before the Court.

FAO No. 266 does not violate Royale Fishing, et al.'s right to privacy

The ponencia evaluates the legitimacy of FAO No. 266 through the lens of the rational basis test, and contrary to the findings of the trial court, concluded that the proprietary information claimed by Royale Fishing, et al. regarding their operations does not fall within the ambit of their constitutionally protected privacy rights.^[6] It explains that Royale Fishing, et al.'s reliance on the notion of safeguarding confidential business data is rooted chiefly in economic concerns rather than in any personal liberty interest. As corporate entities, Royale Fishing, et al. are not entitled to invoke the constitutional guarantee of personal privacy. Consequently, FAO No. 266 need only satisfy the minimal requirements of the rational basis review to be sustained as a lawful exercise of governmental regulatory authority.^[7]

The ponencia considers the information gathered by the VMS to be within the ambit of the definition of trade secrets. However, their trade secrets in connection with their fishing activities do not fall within the scope and protection of the constitutional right to privacy.^[8]

I agree with the ponencia that Royale Fishing, et al. have no reasonable expectation of privacy because the State has the right to regulate the utilization of its resources – in this case, fishing activities.

The right to privacy is "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities." It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Simply put, the right to privacy is "the right to be let alone." [9]

It has already been settled in *Valmonte v. Belmonte, Jr.* [10] that the right to privacy cannot be invoked by juridical entities, and that a corporation has no right of privacy in its name since the entire basis of the right to privacy is an injury to the feelings and sensibilities of the party, and a corporation would have no such ground for relief.

Here, Royale Fishing, et al. are invoking their right to privacy in their capacity as a corporate entity in order to protect their trade secrets. The records do not show that the individual fisherfolks challenged the installation of the VMS and ERS as an infringement on their personal privacy. Verily, Royale Fishing, et al. cannot claim that FAO No. 266 violates their right to privacy as their invocation of such right hinges on their economic interests as a juridical entity, and not on their fundamental right to liberty.

The rational basis test is applicable in the instant case

I join the ponencia in finding that the rational basis test is the appropriate standard of review in this case, given the absence of any fundamental right or suspect class at issue.

The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it. [11]

A.

FAO No. 266 serves a legitimate government interest

The Republic argues that the installation of vessel monitoring measures (VMM) and ERS through FAO No. 266 is a valid exercise of the State's police power to conserve marine resources, prevent illegal, unreported, and unregulated fishing in Philippine waters, and uphold the duty of the State to protect the people's right to a balanced and healthful ecology. [12]

I agree.

The fishing industry is a fundamental component of the commercial and economic frameworks of numerous sovereign states, serving as a primary contributor to national income, employment, and food security. The world's oceans, seas, and other marine domains represent the principal natural resource upon which this industry depends. These vast maritime ecosystems sustain an extensive variety of marine fauna and flora, many of which are harvested by humankind for consumption, trade, and industrial purposes.

However, unregulated or excessive exploitation of such marine resources poses a substantial risk to the long-term sustainability of these species and to the ecological balance of the marine environment. In recognition of these risks, and in pursuit of maintaining an equitable balance between economic advancement and environmental preservation, both domestic and international governing authorities have enacted and implemented a series of legislative, regulatory, and policy measures.

Such frameworks are designed to monitor, control, and manage fishing practices, to prevent overfishing, to

safeguard endangered species, and to ensure the continued viability of marine ecosystems. These measures further seek to promote responsible fishing activities that align with principles of sustainable development, thereby supporting the economic interests of each nation while preserving the integrity of the global marine environment for present and future generations.

In our jurisdiction, the Regalian Doctrine ordains that marine resources belong to the State, and, pursuant to the first paragraph of Section 2, Article XII of the Constitution, their "exploration, development and utilization ... shall be under the full control and supervision of the State." Moreover, their mandated protection, development, and conservation as necessarily recognized by the framers of the Constitution, imply certain restrictions on whatever right of enjoyment there may be in favor of anyone.[13]

Additionally, the limitations on Royale Fishing, et al.'s privacy rights claim do not arise only from general principles tied to government control over shared resources; they are directly communicated as explicit terms attached to their license to operate. This is expressed in Republic Act No. 8550 or the Fisheries Code of 1998, as amended by Republic Act No. 10654, thus:

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

....

(g) to grant the private sector the privilege to utilize fishery resources under the basic concept that the grantee, licensee or permittee thereof shall not only be a privileged beneficiary of the State but also active participant and partner of the Government in the sustainable development, management, conservation and protection of the fishery and aquatic resources of the country.

....

SECTION 7. Access to Fishery Resources. – The Department shall issue such number of licenses and permits for the conduct of fishery activities subject to harvest control rules and reference points as determined by scientific studies or best available evidence. Preference shall be given to resource users in the local communities adjacent or nearest to the municipal waters.

....

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

Clear from the foregoing provisions of law, Royal Fishing, et al.'s license to fish in the Philippine seas is a mere privilege, and as such, may be subjected to monitoring, control, and surveillance. In fact, they may be penalized for noncompliance with vessel monitoring measures under Section 119 of Republic Act No. 8550, as amended, which reads:

Section 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 ([PHP]10,000.00) for municipal fishing or community service in case of failure to pay the fine;
- (2) Two hundred fifty thousand pesos ([PHP]250,000.00) for small-scale commercial fishing;
- (3) Five hundred thousand pesos ([PHP]500,000.00) for medium-scale commercial fishing; and
- (4) Two million five hundred thousand pesos ([PHP]2,500,000.00) 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.

Given the State's legitimate interests in the conservation and management of natural resources, which includes actions against illegal, unreported and unregulated fishing, and in the maintenance of a balanced and healthful ecology, the public purpose and reasonableness of FAO No. 266 may not be controverted.

B.

There is no reasonable connection between the installation of VMS and ERS with the government interest invoked by the Republic

Nevertheless, it is my view that the Republic failed to show any reasonable nexus between the installation of VMS and ERS in all commercial Philippine flagged fishing vessels with the government interest invoked by it.

Records show that that 24/7 monitoring of the location of a licensed fishing vessel, as well the round-the-clock reporting required under FAO No. 266 lack a reasonable connection with the legitimate interest invoked by the Republic.

The Republic's assertion that the installation of VMS prevents illegal, unreported, and unregulated fishing within the Philippine seas is controverted by Solicitor General Menardo A. Guevarra's submission that the output desired from the use of VMS is no different from the present manual reporting being done by the fishing vessels, except that the same is real time, digitized, less prone to human manipulation, and may be quickly enforced. During the oral arguments, Solicitor General Guevarra admitted that the VMS cannot detect cyanide fishing and overfishing. More importantly, VMS cannot track unregistered or illegal fishers, except "very faintly."^[14] The pertinent portions of Chief Justice Alexander G. Gesmundo's interpellation of Solicitor General Guevarra, read:

CHIEF JUSTICE GESMUNDO:

....

Now question, the purpose of the installation of this VMS, Vessel Monitoring System, is to assure there is no illegal, unreported, unregulated fishing, IUUF, right?

SOLICITOR GENERAL GUEVARRA:

One of the purposes, Your Honor.

CHIEF JUSTICE GESMUNDO:

Okay. Can the VMS detect if cyanide fishing was resorted to?

SOLICITOR GENERAL GUEVARRA:

No, Your Honor.

CHIEF JUSTICE GESMUNDO:

Can the VMS determine if the fishing vessels accurately reported what they caught?

SOLICITOR GENERAL GUEVARRA:

That is possible, Your Honor. Because there would be a system of validation.

CHIEF JUSTICE GESMUNDO:

Can the VCM determine that that gadget (sic), the fishing vessel fished at a regulated area?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor, that can be detected because it would set an alarm if a certain vessel would be traversing a restricted zone.

CHIEF JUSTICE GESMUNDO:

Can the VMS determine overfishing?

SOLICITOR GENERAL GUEVARRA:

The matter of overfishing is the subject of studies based on the data collected through the VMS.

CHIEF JUSTICE GESMUNDO:

But the gadget cannot detect overfishing.

SOLICITOR GENERAL GUEVARRA:

Definitely not, Your Honor.

CHIEF JUSTICE GESMUNDO:

It cannot.

SOLICITOR GENERAL GUEVARRA:

It's just the catch for that particular day. But the whole thing aggregated together...

CHIEF JUSTICE GESMUNDO:

So, the output desired from the use of VMS is no different from the present manual reporting being done by these fishing vessels?

SOLICITOR GENERAL GUEVARRA:

In a sense, yes. But it's real time, it's digitized, it's less prone to human manipulation, and for quick enforcement.

CHIEF JUSTICE GESMUNDO:

But do you know the reported data is based on the reporting of the human factor, right?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor.

CHIEF JUSTICE GESMUNDO:

The one encoding. How reliable is the effectiveness of this gadget, the VMS?

SOLICITOR GENERAL GUEVARRA:

That is very true, Your Honor, because if there is an intent really to transmit fraudulent or incorrect data, that is

still possible.

CHIEF JUSTICE GESMUNDO:

Now, how do you address the illegal fishers? The vessels are not registered, they are not installed with VMS?

SOLICITOR GENERAL GUEVARRA:

Yes, Your Honor. But as I said even without the VMS, there may be some other equipment that would enable the BFAR to detect them.

CHIEF JUSTICE GESMUNDO:

That is if the vessels are equipped with AIS?

SOLICITOR GENERAL GUEVARRA:

Yes, only if they are equipped with such other devices.

CHIEF JUSTICE GESMUNDO:

But if the vessels are illegal per se, no AIS, no VMS, how do you know or say that you can detect illegal fishing, IUU fishing?

SOLICITOR GENERAL GUEVARRA:

Well, according to the BFAR even those without any equipment at all may be faintly detected. Not completely blank but faintly detected.[15] (Emphasis supplied)

Accordingly, the ponencia aptly holds that the Republic miserably failed to provide any evidence to show that VMS is more effective or even as effective as manual reporting in preventing unregistered fishing, unreported fishing, and the use of illegal fishing equipment, among others.

Neither did the Republic adequately demonstrate how the submission of catch information through the ERS differs from the manual reporting already in place. Notably, during the interpellation, Atty. Naval asserted that the information gathered by the ERS are the same information reported by a fishing vessel in its Fish Catch Report and Log Sheet, viz.:

JUSTICE CAGUIOA:

So, for purposes of determining only what has been caught, these documents already supply that?

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

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

ATTY. NAVAL

Yes, Your Honor.

JUSTICE CAGUIOA:

ERS. It's the same information?

ATTY. NAVAL

It's the same information, Your Honor.

JUSTICE CAGUIOA:

So, it's exactly the same information?

ATTY. NAVAL

Yes, Your Honor.[16]

Besides, the ponencia astutely holds that there are other less intrusive and more effective means available in preventing and detecting illegal, unreported, and unregulated fishing, that do not require resort to the 24/7 monitoring functionality of the VMS.[17]

In closing, while I commend the State's efforts to establish a monitoring, control, and surveillance system to ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis, nonetheless, the Court must remain mindful of the equally protected rights of individuals and entities affected by governmental actions such as FAO No. 266.

Accordingly, I register my full concurrence with the ponencia and vote to invalidate FAO No. 266 for being unconstitutional.

[1] Rollo (G.R. No. 256282), pp. 3-65; Rollo (G.R. No. 256559), pp. 11-60; and Rollo (G.R. No. 257049), pp. 7-69.

[2] Rollo (G.R. No. 256559), pp. 73-103.

[3] Ponencia, p. 16.

[4] Id.

[5] Id.

[6] Id. at 45.

[7] Id. at 54.

[8] Id. at 52.

[9] *Cadajas v. People*, 915 Phil. 220, 226-227 (2021) [Per J. Lopez, J., En Banc].

[10] 252 Phil. 264, 274 (1989) [Per J. Cortes, En Banc].

[11] *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 116 (2020) [Per J. Leonen, En Banc]. (Citations omitted)

[12] Memorandum of the Republic, p. 75.

[13] *Tano v. Socrates*, 343 Phil. 670, 703 (1997) [Per J. Davide, Jr., En Banc].

[14] TSN, November 21, 2023, pp. 127-130.

[15] Id. See also Supreme Court of the Philippines, Oral Arguments on G.R. No. 256282/G.R. No. 256559/G.R. No. 257049 - November 21, 2023, 3:46:00-3:48:50, available at <https://www.youtube.com/watch?v=ZRI4HVO5CX8> (last accessed on November 17, 2025).

[16] Supreme Court of the Philippines, Oral Arguments on G.R. No. 256282/G.R. No. 256559/G.R. No. 257049 - November 21, 2023, 2:56:54-2:57:22, available at <https://www.youtube.com/watch?v=ZRI4HVO5CX8> (last accessed on November 17, 2025).

[17] Ponencia, p. 64.

CONCURRENCE and DISSENT

LAZARO-JAVIER, J.:

The ponencia frames the issues involved in the three consolidated petitions in this fashion – essentially, calling that the Court strike a balance between the duty of the State to ensure the sustainability and conservation of fishery resources, on one hand, and the protection of the constitutional rights of Royale Fishing Corporation et al. (Royale Fishing et al) on the other.[1]

I manifest an alternative framing – aptly, I say the issues call for the Court to strike a balance between the duty of the State to ensure the sustainability and conservation of fishery resources, on one hand, and the protection of the proprietary rights of Royale Fishing, et al., on the other. Between these two opposing interests, I submit that—contrary to the conclusion of the ponencia—the police power of the State must prevail.

Royale Fishing et. al. correctly availed of the Petition for Declaratory Relief

Royale Fishing et al. filed a petition for declaratory relief before the trial court to question the constitutionality of Fisheries Administrative Order No. 266 (FAO 266), arguing that it violates their rights to privacy, equal protection, due process, and their right against unlawful searches. The Republic counters, however, that the petition for declaratory relief is not a proper remedy because Royale Fishing et al. failed to muster its essential requisites. Rather than ask for judicial construction of the provisions of FAO 266, Royale Fishing et al. improperly assail its constitutionality. The draft ponencia affirms the trial court and holds that Royale Fishing et al.'s remedy was proper.

In terms of suitability of the remedy, I concur.

In *Universal Robina Corporation v. Department of Trade and Industry (URC)*,[2] the Court held that declaratory relief is a viable remedy for questioning the constitutionality of a statute, provided that it meets the requisites of justiciability. It must be established that there is a legally demandable and enforceable right under the Constitution and that the resolution of the statute's constitutionality is necessary to protect such right.[3]

The Republic argues that there is no justiciable controversy here because Royale Fishing et al. failed to demonstrate how they would sustain any injury and the constitutional challenge is not ripe since the violation of their constitutional rights is merely speculative.

The Court has clarified in *URC* that the exercise of judicial review may not always require actual facts resulting from the assailed law, as applied, since a clear and convincing demonstration of a contrariety of rights may suffice.[4] Thus, the ponencia correctly held that there is a clear contrariety of rights in this case: on one hand, the Republic exercises the authority to regulate the fishing activities of all fishing vessels including Royale Fishing et al. and therefore has the right to implement FAO 266. On the other hand, Royale Fishing et al. assert that enforcing FAO 266 violates their constitutional rights to privacy, due process, equal protection, and their right against unlawful searches.

In *In re Obiles v. Republic of the Philippines*,[5] the Court elaborated on the meaning of a justiciable controversy vis-à-vis petitions for declaratory relief, viz.:

There is no allegation in the petition, however, that by reason of such registration any official of the Government has taken steps, or is intending to take steps or threatening to take steps, to hold the petitioner to any obligation, responsibility, or liability. As the petitioner himself candidly admits in his complaint, he is only afraid lest this registration might involve the loss of his Filipino citizenship. This supposed fear in the mind of the petitioner is not what the law considers as an actual controversy, or a justiciable controversy, which requires the intervention of the courts of justice in order that the rights, obligations, or liabilities arising therefrom may be predetermined. In effect, petitioner's allegations of fact in his petition are entitled to no more

than an advisory opinion, because a ruling on the effect of the registration by petitioner involves no actual, genuine, live controversy affecting a definite legal relation.[6] (Emphasis and underscoring supplied)

Here, the government has indeed "taken steps, or is intending to take steps, or threatening to take steps" to hold owners and operators of fishing vessels, including Royale Fishing et al., liable since, as will be further discussed below, non-compliance with the provisions of Republic Act No. 8550[7] or FAO 266 would lead to the non-renewal of their fishing license.[8]

Notably, the Court in URC remarked that although a petition for declaratory relief is a viable remedy to challenge the constitutionality of a law, it does not guarantee the grant of such relief. To be sure, in *Aquino v. Municipality of Malay, Aklan*,[9] the Court held that an action for declaratory relief presupposes that there has been no actual breach of the instruments involved, viz.:

The purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers.[10]

The Republic further asserts that Royale Fishing et al. refused to comply with FAO 266 long before the petition was filed. Thus, the remedy is allegedly improper for there has already been a breach of the statute assailed.[11]

To date, though, there has yet been no violation of FAO 266 requiring that all municipal, commercial, and distant water fishing vessels must comply with vessel monitoring measures (VMM), which include the installation of a Vessel Monitoring System (VMS).

During the oral arguments on October 10, 2023, the esteemed ponente asked Royale Fishing et al. whether they had installed VMS on their fishing vessels, to which they replied in the affirmative:

ASSOCIATE JUSTICE MARIA FILOMENA D. SINGH:

. . . there is already an application from Royale Fishing to install VMS in its fishing vessels? And in fact, some of its fishing vessels already have VMS?

ATTY. NAVAL:

Yes, your Honor, because they made it a prerequisite for the renewal of their license, so we filed a reservation to that effect, your Honor.

ASSOCIATE JUSTICE MARIA FILOMENA D. SINGH:

Are all fishing vessels of Royal Fishing already installed with this equipment? All?

ATTY. NAVAL:

All their licenses are now valid because they have the VMS installed but with reservations.

The Office of the Solicitor General (OSG) admitted the same fact during the oral arguments, albeit, concluding in error that there has already been a breach because of Royale Fishing et al.'s installation of the VMS:

SOLICITOR GENERAL GUEVARRA:

At the time, your Honors, that the Petition for Declaratory Relief was filed in December of 2020, FAO 266 was already being implemented. In other words, as a matter of fact, the private respondent itself, based on our information had actually applied for installation of the VMS for its vessels. That happened even I think before the time that the Petition for Declaratory Relief was filed. So, to that extent, a breach has already occurred. For

that reason, Rule 63 on petitions for declaratory relief would not be proper anymore. Instead, a Petition for Certiorari or prohibition should have been the proper remedy to challenge the validity or constitutionality of FAO 266, or if the breach happened during the pendency of the proceedings before the trial court then the action should have been converted into an ordinary action.

Clearly, there could have been no breach of FAO 266 since Royale Fishing et al. had dutifully complied with the requirement of installing a VMS on their fishing vessels. For the Republic to then conclude that there has been a breach by reason of Royale Fishing et al.'s very compliance is non sequitur. Too, the Republic contends that Royale Fishing et al. have violated their obligations under the FAO 266, yet fails to specify what exactly these violations are.

In *Republic of the Philippines v. Pryce Corporation, Inc.*,^[12] the Court held that in determining whether a petition for declaratory relief is the appropriate remedy to question the constitutionality of a statute, there must be a fine point where there exists an actual case or controversy, yet, there is no breach of said statute.

I cannot see how practicable and feasible this distinction is in actual litigation, albeit I can clearly see how this rule is a powder keg for needless litigation. But this is the rule. It is how this remedy is accommodated in our rule books, which I describe as an anomaly given declaratory relief's history as inceptually a common law remedy in jurisdictions where advisory opinions in the form of references are allowed.

In any event, as discussed, Royale Fishing et al. have sufficiently shown an actual case or controversy through the contrariety of rights between themselves and the Republic, while also showing that they have not breached their obligations under FAO 266.

The issue pertaining to Oceana et. al.'s motion to intervene is moot

The ponencia finds that the trial court erred when it denied Oceana Philippines International et al.'s (Oceana et. al.) motion to intervene on the ground that they lack the legal standing to bring forth the third-party suit. Although I agree with the ponencia that the elements of a motion to intervene^[13] are present, Oceana et. al.'s motion to intervene is rendered moot in view of the resolution of the case here on the merits.

The Court in *Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas*^[14] has declared an issue moot when it ceases to present a justifiable controversy, that there can be no more relief asked from the Court. The Court further elucidated on the effects of a moot issue, viz.:

An issue becomes moot when it ceases to present a justifiable controversy so that a determination thereof would be without practical value. In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition." "It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.^[15] (Emphasis supplied)

Notably, the ponencia also cites *Foster-Gallego v. Spouses Galang*^[16] which held that a petitioner questioning the denial of his or her motion to intervene can only question the order denying the intervention, not the decision itself. Since the purpose of a motion to intervene is to provide a third party with the opportunity to become a litigant in the case in order to protect a right which may be affected by the proceedings, I see no practical purpose for the Court to still rule on Oceana et al.'s motion to intervene precisely because their arguments as to the substantive issues are no longer to be considered in resolving whether FAO 266 is constitutional.

As things now stand, Oceana et. al. no longer has such opportunity since the case they seek to intervene in is already being resolved on the merits. Oceana et. al. filed a motion for reconsideration after the Regional Trial

Court, Malabon City, denied its motion to intervene. However, the trial court's decision denying the declaratory relief is now before this Court and the main case for intervention is now being resolved. It is of no practical value to further act on the intervention when we are now here resolving this case.

Are Oceana et al. denied their right to be heard? Absolutely not. I see no disparity of interests and issues between this entity and Royale Fishing et al. They have the same, or at least similar, interests and issues. The insistence to intervene, I say, displays a level of maturity we have in terms of advocacy and rule of law. It is a waste of time and resources to deal with a potential party when there is already an alignment of this potential party's interests and issues with others and yet it still insists to be heard on intervention. In an industry where the big players are known, and we do not need evidence to show that Royale Fishing et al. and Oceana et al. are the big players, Oceana et al. must have seen the action below to be forthcoming before it was actually instituted. Oceana et al. could have simply co-petitioned in the first instance instead of coming forward later and disrupting orderly procedure.

FAO 266 is a valid exercise of the police power of the State

Going now to the substantive issue, the ponencia strikes down FAO 266 for being allegedly unconstitutional, ordaining, in essence: first, the information gathered by the VMS constitutes "trade secrets" or "fisher's secrets;" second, these trade secrets are not ensconced within Royale Fishing et al.'s constitutional right to privacy, their invocation of such right being hinged on economic interests rather than the fundamental right to liberty; third, the rational basis test thus applies; fourth, there is no reasonable connection between the State's legitimate government interest and the 24/7 monitoring and reporting of the fishing vessels' location; and finally, the same constitutes unreasonable search and seizure.

I respectfully differ.

a.

A secret divulged is not a secret to the recipient any longer; the information gathered by the VMS were the same information voluntarily and manually reported to the Bureau of Fisheries and Aquatic Resources (BFAR) by Royale Fishing et al., hence, there is no longer a reasonable expectation of privacy.

Air Philippines Corp. v. Pennswell, Inc.,^[17] is the first case which provides a clear definition of "trade secrets," viz.:

A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his [or her] employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list.^[18]

In fine, a trade secret is: (a) a plan, process, tool, mechanism, formula, or compound; (b) used in one's business; (c) which is known only to the owner and his or her confidential employees; and (d) gives the owner an advantage over his or her competitors who do not possess the information. Information as a trade secret includes technical or commercial information.

Cocoland Development Corporation v. NLRC^[19] cautions, however, that not all matters claimed by a business as a trade secret is necessarily protected as such. Thus, it was held that Cocoland's "naked contention that its own

determination of what constitutes a trade secret should be binding and conclusive" upon tribunals and courts "is erroneous and dangerous, and deserves the barest consideration." For sustaining such contention would permit a business to label almost anything a trade secret and create a self-serving weapon. Thus, any determination by management as to the confidential nature of technologies, processes, formulae, or other so-called trade secrets must have substantial factual basis which can pass judicial scrutiny.[20]

On this score, our own jurisprudence echo the following factors to determine whether an information is a trade secret: (1) the extent to which the information is known outside the employer's business; (2) the extent to which the information is known by employees and others involved in the business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and to competitors; (5) the amount of effort or money expended by the company in developing the information; and (6) the extent to which the information could be easily or readily obtained through an independent source.[21]

Ordinarily, Royale Fishing et al. would have borne the burden to adduce the requisite evidence to show that the alleged protected information weathers the foregoing factors to be considered a trade secret. As pointed out by the ponencia, however, the Republic has made multiple admissions of this fact throughout the proceedings, first, through its witness Mr. Jefferson Dela Cruz before the trial court,[22] and second, through Solicitor General Menardo Guevarra during the oral arguments before the Court.[23] Both of them, when examined, supposedly agreed that the compilation of information—the exact longitude, latitude, depths, time of day—when and where the most abundant fish are is a trade secret. These are allegedly judicial admissions.

Judicial admissions do not require proof.[24] A judicial admission is a formal statement, either by the party or by his or her attorney, during a judicial proceeding which removes an admitted fact from a field of controversy. It is a voluntary concession of a fact by a party or his or her counsel during judicial proceedings.[25] It is evidence of a high grade precisely because it is presented by the very party against whom it is proffered. Judicial admission is literally putting their money where their mouth is.

Whether the subject information is a "trade secret" is one thing; whether Royale Fishing et al. enjoy a reasonable expectation of privacy over the same is another. The two cannot be conflated. And both involve legal conclusions not capable of judicial admission.[26] Therefore, whatever statements the learned Solicitor General made in the course of oral arguments or the witness during trial do not bind us as judicial admissions in determining these issues.

Trade Secret -Analysis and Findings

The information gathered by the VMS is not protected trade secrets based on my review of the records and Royale Fishing et al.'s representations.

In the realm of trade secrets, technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering, or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation, or maintenance of a structure, process, equipment, or thing.

Commercial information, on the other, is information that relates solely to the buying, selling, or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information though it is one factor in the analysis.

If I understand their position correctly, Royale Fishing et al. submit that the information at issue is commercial and technical information and assert that it contains unique trade secrets.

The information as identified in the records consists of a compilation of information—the exact longitude, latitude, depths, time of day—when and where the most abundant fish could be located. I do not see them as the result of technical studies. They are simple recordings of a global positioning system (GPS), the products of a technical and technological innovation – but are not themselves technical information arising from technical studies. They are the end-results of the technical studies and application – the GPS which however is not the information at issue in this case. The details are not also related solely to the buying, selling, or exchange of merchandise or services. They are positioning and access information that relates as well to, as will be further discussed below, marine regulation, environmental protection, and overall food and national security.

More, as to why the information is a trade secret, Royale Fishing et al. did not go the extra step to explain and identify specifically what those were. Even if the information suggests where the marine resources, particularly fish, can be potentially located, the same is something that both the Government and local fisherfolk have and should have knowledge of as part of the Government's role in protecting the country's natural resources and our Constitution's social justice measures for fisherfolk. To be sure, the exact location where Royale Fishing et al. conduct their activities is an open, public area which the State—against whom Royale Fishing et al. invoke their proprietary rights—indubitably owns and, undoubtedly, has the right to protect, conserve, and regulate.

I am not inclined to believe that in this age of climate change, global warming, and priorly unseen detrimental impacts on sources of the country's food supply, only the privileged should have the advantage, and not just an advantage, but an advantage elevated to constitutional heights. This line of thinking will result only in a destructive monopoly or at best, a cartel of a privileged few, having the ability and wherewithal to control the prices of fish and other marine resources. This is contrary to the express mandate of Section 7, Article XVIII of the 1987 Constitution which requires the State to "protect the rights of subsistence fisherfolk, especially of local communities, to the preferential use of local marine and fishing resources[.]" This is echoed in Section 7 of Republic Act No. 8850 which provides that "[p]reference shall be given to resource users in the local communities adjacent or nearest to the municipal waters."

In balancing the proprietary rights of Royale Fishing et al. and the duty of the State to protect and conserve its resources, the Court must include the vulnerable fisherfolk in its consideration. As the ponencia has noted, intervenors Pablo R. Rosales and Ronaldo R. Reyes have suffered the consequences of unabated and unregulated overfishing by commercial fishing vessels in municipal waters.[27] Accordingly, the Court should uphold measures that benefit the very people that the fundamental law seeks to protect.

Accordingly, with respect, I am not satisfied that the information that Royale Fishing et al. say amounts to a trade secret, meets the definition of a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism," or otherwise meets the definition of a "trade secret" as contemplated by law.

If I am wrong in my characterization of the information at issue, and let us say the information qualifies as a technical or commercial information for purposes of becoming a trade secret, I will explore the other facets of this issue.

The requirement that the information was supplied to the Government reflects the purpose of protecting the informational assets of third parties. Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.

To satisfy the "in confidence" component of a trade secret, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.

Here, I cannot conclude that Royale Fishing et al. had a reasonable expectation of confidentiality vis-à-vis the disclosure to the Government itself. As also discussed below, the positional and access information required of petitioners is to be "supplied" to the Government itself – there is no indication and there is no mandate for this information to be disclosed to anyone else. The information is not to be disclosed to anyone, especially competitors in the fishing industry, as a result or in consequence of the assailed Government regulation. Perhaps under a different regime, such as an access or freedom of information request, the disclosure can be sought, but that is a totally different story and issue from the case at bar. It is one thing to resist disclosure to the Government itself, but quite another to resist disclosure to third parties. We are only concerned with disclosure to the Government for police power reasons.

So Royale Fishing et al.'s objection on the ground of "trade secrets" is greatly attenuated if this objection has any valid basis at all.

In any event, what is the detailed and convincing evidence about the potential for harm to the Royale Fishing et al. if (a) the positioning and access information is provided to the Government, and (b) which is a non-issue under the assailed Government regulation, to third parties?

The party resisting disclosure must provide detailed and convincing evidence about the potential for harm. They must demonstrate a risk of harm that is well beyond the merely possible or speculative, though it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for compelled disclosure to either the Government or a third party where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms are self-evident or can be proven simply by alleging a description of harms not yet actually suffered.

In requiring disclosure to the Government, the information at issue will be utilized 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 information is to be provided to the BFAR – which obviously is not in the business of merchandising fish and other marine resources. There is no provision for disclosure to third parties other than relevant government agencies for purposes of prosecution or regulation.

Clearly, there is no detailed and specific evidence of harm that arises from the disclosure to the Government. Also, disclosure to third parties is not an issue because no one, not the Government or BFAR, is endeavoring to disclose the information to any parties at all, and even if the Government or BFAR were so minded in the future, the disclosure will only be exclusively to parties for reasons of regulation or prosecution. It is pure speculation that the information contains technical or commercially sensitive information that could be exploited by the Government or a third party (if at all) to undermine the viability of Royale Fishing et al.'s commercial undertakings.

With specific reference to the mandated disclosure to the Government, Royale Fishing et al.'s assertion that access to the information could potentially be exploited by others in the fishing industry does not establish a reasonable expectation of harm. The fact that others may be interested in the positioning and access data does not by itself

establish a reasonable expectation of harm. I fail to see how the specific information sought could reasonably be expected to be used in a manner leading to harms to Royale Fishing et al.'s commercial interests when the avowed purpose is to ensure sustainability of marine resources and environmental protection.

To be sure, the impact of the disclosure to the Government on Royale Fishing et al.'s competitive position was not intended to include a litigant's competitive position in civil, regulatory, or even criminal litigation. There are enough measures designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions. For greater certainty, these protective measures are aimed at protecting such assets in the competitive context of the marketplace, rather than before the courts or administrative tribunals.

To stress, Royale Fishing et al. have not provided sufficient evidence in its submissions to prove that the release of the information to either the Government or a third party (if at all) would constitute a reasonable expectation of harm, prejudice significantly the competitive position of their businesses, interfere significantly with the contractual or other negotiations of, or result in undue loss to them. For good measure, I find that Royale Fishing et al. have failed to provide sufficient evidence to establish exactly how the information at issue could be used to cause the alleged harms to their commercial interests if disclosed to the Government. On the contrary, there exists clear public interest in its disclosure to BFAR.

Right to Privacy – Analysis and Findings

The right to privacy is a fundamental right long held sacred in our Constitution. *Morfe v. Mutuc*,^[28] quoting Justices Douglas and Justice Brandeis of the United States Supreme Court, reminds, "[l]iberty in the constitutional sense must mean more than freedom from unlawful government restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom," and this right to be let alone is "the most comprehensive of rights and the right most valued by civilized men."^[29]

But it is not absolute. It yields in the face of an overriding compelling state interest.^[30] And, in determining whether the government validly encroached upon this constitutionally protected right, the Court reckons with two important questions: first, did the concerned person exhibit a reasonable expectation of privacy; and second, did the government violate such expectation?^[31]

To both these questions, I submit that the answer is a resounding "no."

Ople v. Torres^[32] instructs that the reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether by his or her conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable.^[33] The factual circumstance of the case determines the reasonableness of the expectation. However, other factors, such as customs, physical surroundings and practices of a particular activity, may serve to create or diminish the expectation.

In my view, the totality of circumstances surrounding Royale Fishing et al.'s fishing activities prompts a substantially diminished expectation of privacy. Consider:

First, Royale Fishing et al. are operators of commercial fishing vessels that operate within the Philippine National Territory,^[34] over which the State, in its sovereignty, exercises encompassing powers and prerogatives. Section 2, Article XII of the 1987 Constitution categorically pronounces:

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

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

This is the Regalian doctrine codified. *Jura regalia* declares that all lands of the public domain, including the waters and the natural resources therein, belong to the State.[35] In *Maynilad Water Services, Inc. v. The Secretary of the Department of Environment and Natural Resources*,[36] the Court seamlessly tied together the regalian doctrine vis-à-vis the State's inherent police power through the public trust doctrine, which speaks of an imposed duty upon the State and its representatives of continuing supervision over the patrimony. Thus, "[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust." [37]

Two things are clear: one, the State owns the sea over which *Royale Fishing et al.* conduct their operations; and two, the State has the duty and the power to supervise all activities over the said property. In sum, *Royale Fishing et al.* are no more than mere tolerated guests in the property of the State. Its activities to explore, utilize, and exploit the resources therein is but a concession by the State subject to many restrictions. The entirety of their operations and, consequently, the economic benefits derived therefrom which they now seek, to preserve, are possible only because the State permits it. Surely, as mere concessionaires, *Royale Fishing et al.* are fully aware that they do not have free reign to do whatever they wish, absolutely free of State regulation. On the contrary, all activities they undertake are subject to the supervision and surveillance of the State, thus, diminishing to a great extent, if not totally negating *Royale Fishing et al.*'s expectation of privacy on and in the Philippine seas.

Second. The restrictions on *Royale Fishing et al.*'s expectation of privacy are not merely constructive or implied from the State's ownership of national patrimony, but are expressly made known to *Royale Fishing et al.* as conditions for the grant of their license to engage in their businesses. Republic Act No. 8550, as amended by Republic Act No. 10654, explicitly state:

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

....

g. to grant the private sector the privilege to utilize fishery resources under the basic concept that the grantee, licensee or permittee thereof shall not only be a privileged beneficiary of the State but also active participant and partner of the Government in the sustainable development, management, conservation and protection of the fishery and aquatic resources of the country. . . .

....

SECTION 7. Access to Fishery Resources. -The Department shall issue such number of licenses and permits for the conduct of fishery activities subject to harvest control rules and reference points as determined by scientific studies or best available evidence. Preference shall be given to resource users in the local communities adjacent or nearest to the municipal waters.

....

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

Clearly, Royale Fishing et al. have been apprised by law, no less, that their license to fish in the Philippine seas is subject to the following conditions: first, it is a mere privilege, and they are mere beneficiaries of the State; and second, it places upon them the concomitant duty to cooperate with the State to ensure the sustainability of aquatic resources, such as being subjected to monitoring, control, and surveillance. Royale Fishing et al.'s licenses are subject to the limitations provided by Sections 7 and 8 of Republic Act No. 8550 as well as the prohibited acts under Chapter VI of the same law.[38] All these and other legal requirements and conditions are deemed incorporated in these permits and licenses and the parties need not repeat them. They do not even have to be referred to. Every such permit, license or contract, thus, contains not only what has been explicitly stipulated, but also the statutory provisions that have any bearing on the matter.[39]

On this score, Section 119 of Republic Act No. 8550, as amended, penalizes, non-compliance with vessel monitoring measures with, among others, revocation of the errant vessel's license, viz.:

SECTION 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 large-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. (Emphasis supplied)

This requirement had been in place as early as February 27, 2015 when Republic Act No. 10654 lapsed into law, of which Royale Fishing et al. are conclusively deemed to have constructive knowledge.[40] As worded, this law expressly curbs any expectation of privacy by fishing vessels plying the Philippine seas.

Finally. Trade secrets, by their very definition, are information known only to the owner and to the persons to whom it is necessary to confide such secrets,[41] usually the confidential employees of the business. In any case, once the business voluntarily divulges the trade secret to another, it has effectively relinquished any expectation of privacy over such information, at least, with respect to the recipient of the secret.

The VMS does not reveal anything not already revealed to the BFAR via manual reporting to which Royale Fishing et al. poses no objections. This, in fact, was admitted by Royale Fishing et al.'s counsel during the oral arguments.[42] In other words, this means that whatever trade secret – the exact longitude, latitude, date and time where Royale Fishing et al. had the most abundant harvest of fish – which they purportedly seek to protect here, they had, in the past, already divulged to the government.

The VMS is a means to obtain data already being provided to the Government – but in a more efficient, proactive, and time-relevant fashion. Positioning and access information is made available in real time through the use of the VMS. Insofar as activities in the Philippine waters are concerned, there should be no secrets from the State on the destinations of the vessels and the activities they pursue while sailing the Philippine seas and the time frame within which they undertake these activities. To do so will prevent the State from obtaining the necessary information to ensure that the vessels are kept within the fishing zones and only for the prescribed periods.

As a last point on this matter, the Court itself is not unaware of the fast-changing times brought about by the age of technology. In keeping with the increasing thrust for efficiency in processes, procedures, and systems with the aid of technology, the Court has even deemed it ideal to include technologically-adaptive management among the Four Guiding Principles of the Strategic Plan for Judicial Innovations 2022-2027. Thus, we now not only have e-filing or the filing of electronic submissions in courts, we also have the eCourts.

Indeed, I do not see why the Judiciary is allowed to fully embrace the digitization of our processes and, in fact, champions the leaps and bounds by which we have advanced on this arena, yet, a similar direction taken by the Executive through FAO 266 is met with strong, nay, deadly resistance. To my mind, the BFAR is not doing anything that the Court has not done when we allowed e-filing. The installation and use of VMS is nothing more than taking an old system and digitizing the same to allow a faster, more efficient, and more streamlined processing of information in keeping with the times. If, indeed, as was revealed during the oral arguments, the BFAR merely seeks to collect the same data that it had been gathering manually before, but this time through the VMS, there is no reason why the collection of such information should not be done in real-time.

Given all the circumstances, it is apparent that, as against the Government, Royale Fishing et al. cannot rightfully invoke any expectation of privacy vis-à-vis their so-called trade secrets.

To stress, what is involved here are Philippine seas and the natural resources found therein. Our seas are highly supervised and regulated public properties of the State. Disputes with other nations even arise involving the ownership of our seas and its rich aquatic resources. It would have been totally different if the State sought to monitor Royale Fishing et al. as they operate within the completely private confines of their private properties such as compounds or offices registered in their names. But such is not the case here. In this case, Royale Fishing et al. invoke privacy as it ventures into a property not its own, seeking to exploit resources not its own, and invokes this right against the owner of such property, no less.

b. The rational basis test applies here

Of the three inherent powers of the State, the police power is concededly the most essential, insistent, and illimitable of powers, exercised in the promotion of the general welfare and the public interest.[43] It is the power vested in the legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same. As such, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to the general welfare.[44]

The Court, in *Calalang v. Williams*,^[45] could not have more eloquently illustrated the delicate balance between the State's police power, on one hand, and the constituents' rights and freedoms, on the other, viz.:

To this fundamental aim of our Government the rights of the individual are subordinated. Liberty is a blessing without which life is a misery, but liberty should not be made to prevail over authority because then society will fall into anarchy. Neither should authority be made to prevail over liberty because then the individual will fall into slavery. The citizen should achieve the required balance of liberty and authority in his [or her] mind through education and, personal discipline, so that there may be established the resultant equilibrium, which means peace and order and happiness for all. The moment greater authority is conferred upon the government, logically so much is withdrawn from the residuum of liberty which resides in the people. The paradox lies in the fact that the apparent curtailment of liberty is precisely the very means of insuring its preservation.

In the task of finding this equilibrium between State authority and individual liberty, three tests are available: (1) the strict scrutiny test; (2) the intermediate scrutiny test; and (3) the rational basis test. The strict scrutiny test applies when a classification either (a) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (b) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. The rational basis test applies to all other subjects not covered by the first two sets,^[46] and to economic legislation,^[47] i.e., those affecting property rights.

In *Roe v. Wade*,^[48] the United States Supreme Court clarified which matters fall within the protective realm of privacy, i.e., "only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty' are included in this guarantee of personal privacy." In other words, the right to privacy is a fundamental right insofar as it protects the natural freedoms inherent in all human beings, i.e., the freedom to travel, to choose one's abode, to marry, etc. Clearly, trade secrets cannot be equated in value to these fundamental and inherent natural rights. On the contrary, *Air Philippines Corporation v. Pennswell, Inc.*^[49] identifies trade secrets as proprietary rights, viz.:

Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship."^[50] (Emphasis supplied, citations omitted)

This, I believe, is the correct characterization of trade secrets. Obviously, trade secrets serve no other purpose but to further the economic interests of business. Here, *Royale Fishing et al.* strive to keep the information concealed and confidential because it gives them edge over their competitors and drives in their favor, huge profits. Trade secrets are a proprietary, not fundamental, right.

Therefore, the proper test here is the rational basis test. This test only requires that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve

it.[51] The onus is on the challenger to prove that the measure does not, and the presumption is that the measure does comply. FAO 266 satisfies the rational basis test.

The legitimate government interest behind FAO 266 is not disputed, since the monitoring and surveillance of fishing vessels to prevent illegal, unreported, and unregulated fishing (IUUF) is part of the State's constitutional duty to protect the people's right to a healthful ecology.[52] The installation of the VMS is, in turn, reasonably connected to such interest, as shown by its objectives under FAO No. 266:

Section 1. Objectives – This order has the following objectives:

- To enhance monitoring of fishing operations for fisheries management through the implementation of vessel monitoring measures.
- To enhance law enforcement to regulate the capture fisheries sector towards achieving long term resource sustainability.
- To implement vessel monitoring measures to track fishing behavior for scientific research and data.
- To establish a system that will facilitate law enforcement and aid in case building and prosecution of fisheries law violations.
- To gather data on fishing effort and catch data by means of an electronic reporting system which will serve as basis for fisheries management measures.
- To aid in the seafood traceability and catch documentary requirements of the government.
- To ensure safety for fishers thru a tracking device that would monitor the vessel's location during accidents and disasters:
- To implement the policies embodied in Republic Act 8550, as amended by RA 10654 and its implementing rules and regulations, relating to the vessel monitoring requirements of fishing vessels.

As aptly explained by the OSG, there is a thrust to employ electronic means of transmitting data to the BFAR, as opposed to the outdated manual reporting, since the VMS is useful in detecting when a fishing vessel enters a regulated area upon which it would set off an alarm.[53] The fact that the reporting of the vessel's location is real time further allows the government to take the necessary action promptly, as opposed to manual reporting, which is easily prone to tampering, alteration, and falsification. With the VMS, the government will have clearer and faster visibility of what goes on in its waters, lending not only transparency, but also places accountability on fishing vessels.

Concededly, while the VMS cannot detect all types of illegal fishing practices, it remains a valuable instrument for purposes of gathering scientific data, monitoring, verification, and conservation, which in and by itself are significant undertakings considering the scarce resources available to the BFAR and to local government units vis-à-vis the vast maritime areas subject to their monitoring. The reasonable connection of this measure to the policy of the State cannot be viewed only from the perspective of detecting all types of IUUF violations. Rather, from an enforcement perspective, the VMS is essential to the BFAR and its collaborating agencies, including concerned local governments. To retain a dated system of delayed reporting and intermittent manual collection of data would hinder them from effectively carrying out their tasks – they are expected to patrol the waters while remaining firmly chained to the dock.

All told, FAO 266 is a valid exercise of police power by the State, which we ought to uphold in this case.

c. FAO 266 does not amount to unreasonable search and seizure

Indeed, the Constitution holds sacrosanct the right of the people against unreasonable searches and seizures:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

This constitutional provision prevents violations of privacy and security in person and property, and protects against "unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted."

The right applies only to cases of "search," i.e., where law enforcement authorities actively look for evidence against an individual in his or her own home or person. *United States v. Arceo*[54] reminds of the rationale behind the right against unreasonable search and seizure, viz.:

The inviolability of the house is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.

The privacy of the home — the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in the rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guaranteed to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of the forces dare to cross the threshold even the humblest tenement without its owner's consent.

The information gathered by the VMS, particularly, the location of the vessels at a given time in the Philippine waters, however, is not protected by the sanctity of the home or by some other private space. The location of the vessel is public. Any person venturing out in the ocean at the same time and at the same place as a fishing vessel will be aware of its location, be it a regulated or unregulated zone. Neither can *Royale Fishing et al.* claim privacy over the information gathered by the VMS since, as earlier mentioned, they voluntarily had turned over similar information to the BFAR in the past, albeit by manual reporting.

The assailed measure – reporting by VMS – is simply a new way, more efficient, transparent, honest and time-sensitive, of reportage for matters already reported, clumsily though, in the past. The situation is not all too different from the requirement among subdivision owners requiring the surrender of an identification card at the guard house. This was the practice in the past. Now, we have the RFID which collects data for those coming in and out of gated communities. We also have – relatively archaic – other means of regulating entries, by providing IDs which are then captured in data servers. The VMS is, as stated, a new way of accomplishing old things.

In fact, the VMS is not only a logical progression, but a necessary one. It allows the BFAR to track vessels with ease and efficiency. If our laws already permit the gathering of such information, I see no constitutional reason to prohibit real-time monitoring when it serves precisely the same regulatory purpose, only better. What logic would restrain the State to a slower, less reliable, and far more vulnerable method, when technology already affords a

more accurate and responsive system?

Post-facto reporting, in truth, invites manipulation. It offers ample opportunity for falsification, alteration, or for the convenient erasure of wrongdoing. Manual reporting rests entirely on the honesty of the fisherfolk who reports it. Though we hope that this honesty is voluntary to all, this simply cannot be presumed as absolute. The State must not be made to rely on post-facto accounts that may already be compromised by the time they reach the hands of State regulators.

More, the State simply does not have the limitless manpower and resources necessary to verify the accuracy of every manually submitted report. Expecting our government agencies to physically validate each relevant datum is impractical and inefficient. It also ignores the reality that our public resources are finite. Technology exists precisely to bridge these gaps and to serve as an equalizer where the State's financial and logistical capacity is limited.

We cannot, and should not, consign ourselves to manual methods forever. The Constitution does not demand stagnation and lack of development. Regulation must evolve as society evolves. As technology advances, the challenges faced by government agencies must also grow in scale and complexity. To insist on outdated modes of reporting is to ignore the very progress that allows the State to safeguard its waters and to deter IUUF.

For the past three decades, the international community has been developing rules to prevent, deter, and eliminate IUUF.[55] Various regional fisheries management organizations implementing the United Nations Fish Stocks Agreement allow high seas boarding and inspection, and require vessels to use VMS.[56] Norway, for instance, has required satellite tracking of all its fishing vessels over 24 meters. The VMS transmits the vessel's position, course, and speed once per hour, 24 hours a day, regardless of where in the world the vessel is located.[57] The United States of America's VMS program monitors the largest VMS fleet in the world, and similarly operates 24 hours a day, seven days a week, with near-perfect accuracy.[58] Aside from locational tracking, the American VMS program tracks, monitors, and predicts fishing effort, activity, and location and verifies or validates data from other sources.[59] Our neighbors, namely, Japan, Taiwan, Indonesia, Thailand, Bangladesh, Sri Lanka, Palau, and the Federal States of Micronesia all require some form of VMS also to curb IUUF.[60] Mandating VMS use in commercial fishing vessels appears to be the gold standard in IUUF prevention. And yet, here we stand, invalidating a regulation which precisely aims to bring us into this new age of surveillance and data gathering. Why must we lag behind all other jurisdictions that are doing their part to combat IUUF?

Finally, "search" as contemplated under Section 2, Article III of the 1987 Constitution cannot be equated to "monitoring." A search is active. Monitoring, on the other hand, is passive. More important, it is a function that falls completely within the ambit of the State's power to supervise its waters which form part of its national territory. To be sure, there has been a global thrust toward the adoption of VMS as regulatory measure in commercial fishing. The European Union (EU), for example, has been among the first to employ VMS as means to monitor fishing activities under Commission Regulation (EC) No. 2244/2003. Under this law, the fishing vessels are also prohibited from engaging in fishing activities unless a VMS is installed therein. Apart from the EU, member countries of the Northwest Atlantic Fisheries Organization have also required functional VMS onboard vessels.[61] Indeed, the significance and positive impact of VMS in the regulation of fishing activities for purposes of protecting marine life cannot be contested.

FAO 266 does not violate the equal protection clause of the Constitution

The equal protection clause is engaged in the most serious manner where the basis of distinction is a suspect class – race, gender, age, economic status etc. Here, no suspect class is involved. The classification is based on grounds that legislature has imposed in other legislations – which we must abide by and are strongly presumed legal – and

have adjudged to address social justice and social equity concerns.

The ponencia rules that FAO 266 is violative of the equal protection clause for governing only commercial fishing vessels, but not municipal fishing vessels. The non-inclusion of municipal fishing vessels in FAO 266 created a classification that is not based on substantial distinctions which make for real differences. Stated differently, the promulgation of FAO 266 unjustly favors municipal fishing vessels by regulating only the fishing activities of commercial fishing vessels.

Again, I beg to differ.

The Court in *Garcia v. Drilon*[62] has reiterated the requisites of a valid classification that is not violative of the equal protection clause, to wit:

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[63] (Emphasis in the original)

I focus on the first requisite.

Republic Act No. 8550 defines municipal fishing and commercial fishing, as follows:

SECTION 4. Definition of Terms. — As used in this Code, the following terms and phrases shall mean as follows:

10. Commercial Fishing — the taking of fishery species by passive or active gear for trade, business & profit beyond subsistence or sports fishing, to be further classified as:

- (1) Small scale commercial fishing — fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to [20] GT;
- (2) Medium scale commercial fishing — fishing utilizing active gears and vessels of 20.1 GT up to [150] GT; and
- (3) Large commercial fishing — fishing utilizing active gears and vessels of more than [150] GT.

57. Municipal fishing — refers to fishing within municipal waters using fishing vessels of [three] gross tons or less, or fishing not requiring the use of fishing vessels. (Emphasis supplied)

Under Republic Act No. 8550, a fishing vessel engaged in commercial fishing must be at least 3.1 gross tons, while a fishing vessel engaged in municipal fishing must be 3 gross tons at the very most. Evidently, the difference between a fishing vessel engaged in municipal fishing and one in commercial fishing is only 0.1 gross ton.[64] The ponencia is of the view that this does not amount to a substantial difference for a valid classification between the two fishing vessels.

Respectfully, what the ponencia fails to consider is that these fishing vessels, although varying in their weights only by 0.1 ton, their respective regulations are starkly different.

A stark difference between the two fishing vessels is how a municipal fishing vessel is regulated by different

entities, not just by the Department of Agriculture and its offices. Pursuant to Republic Act No. 8550, it is the Local Government Units (LGUs) that determine whether a fishing vessel may conduct fishing activities within their respective jurisdictions.[65] Additionally, Executive Order No. 305 series of 2004 grants cities and municipalities the express mandate to regulate fishing vessels of 3.0 gross tonnage and below, i.e., municipal fishing vessels.[66]

Clearly, there is a substantial difference between municipal fishing vessels and commercial fishing vessels. Municipal fishing vessels are regulated based on gross tonnage and the area or jurisdiction where fishing activities are conducted. Further, they must comply with the standards set by both the Department of Agriculture and their respective LGUs where the vessel seeks to engage in fishing activities. On the other hand, commercial fishing vessels are regulated based only on gross tonnage to be determined by the Department of Agriculture without the participation of LGUs.

While it may be true that the difference in the definitions of the two kinds of fishing vessels hinges only on 0.1 gross ton, this threshold is indispensable in determining the classification of a fishing vessel and the particular entity in charge of regulating the vessel's fishing activities. The threshold exists to implement the most efficient way of regulating fishing activities within our waters. Without such classification, it would cost the Department of Agriculture a substantially larger amount of time and resources to regulate said activities due to the lack of participation from the LGUs and other departments involved in the implementation of Republic Act No. 8550.

Indeed, at some point, we have to provide cut-offs. We have to say that at some threshold we are satisfied but below that mark is unsatisfactory. For entry level purposes, law students become lawyers at some cut-off grade. Fall below that mark, a law student cannot be a lawyer. There is a reasonable basis for specifying this threshold. The basis may not absolutely hold true for all times, but the test is only reasonableness. Provide a reason, the grading cut-off passes the test of substantial distinction making real differences.

Here, we speak of vessels. As shown above, the distinction is based on prior rules – a statute and a host of regulations. These laws have not been successfully challenged. They must be complied with. They remain to be reasonable basis for making distinctions. As such, they make for real differences. For this Court to reject them as being unreasonably arbitrary when they remain in our book of authorities may be flawed. My other serious concern – we are not a trier of facts; we did not receive evidence as to what and what is not reasonable as regards the weight of a vessel to be unconstitutionally permissible. With respect, we are not experts in ship-building, maritime regulation, marine conservation, to make a decision on what tonnage is permissible and what is not.

Royale Fishing et al.'s right to due process and to participate in the decision-making process was not violated

Although due process has no exact definition, the standard in determining whether a person was accorded due process is whether the restriction on the person's life, liberty, or property is consistent with fairness, reason and justice, and free from caprice and arbitrariness.[67] As applied to procedural due process, the question to be asked is whether the person was given sufficient notice and opportunity to be heard.[68]

In his Concurrence and Dissent in *Syjuco v. Abaya*,[69] which also involved a supposed violation of the public consultation requirement, Associate Justice Benjamin Caguioa eruditely explained:

In all, the essence of due process is to afford the public an opportunity to be heard, or to grant it a fair and reasonable opportunity to explain its side. This ensures responsiveness in policy-making, which in turn, allows for a more effective government administration. . . The Court should not bind the hands of administrative agencies in the exercise of their regulatory functions by imposing a restrictive interpretation of the public consultation requirement[.][70]

The same rationale holds true here.

The Court must not unduly impede BFAR's implementation of Republic Act No. 8550, as amended by Republic Act No. 10654, by imposing a restrictive interpretation of the public consultation requirement.

These agencies are part of the Executive, a co-equal branch of government tasked with the faithful execution of our laws and must be granted sufficient leeway to pursue their mandate to "ensure the rational and sustainable development, management and conservation of fishery and aquatic resources in Philippine waters" and to "grant the private sector the privilege to utilize fishery resources under the basic concept that the grantee, licensee, or permittee shall . . . also [be an] active participant in the [] protection of the fishery and aquatic resources of the country." [71]

The Court in *Febria v. Secretary Piñol* [72] recognized BFAR's expertise in its field and thus ordained, viz.:

[T]he promulgation of fisheries policies and regulations is not a ministerial duty and entails the exercise of the respondents' technical expertise and judgment in light of numerous considerations, which include the possible impact on aquatic resources and marine ecosystem. The Court recognizes the expertise of the Bureau of Fisheries and Aquatic Resources which the Congress expressly authorized to curb illegal, unreported, and unregulated fishing and mandated to ensure compliance of fishing vessels with conservation and management measures. The Court will not interfere with the respondents' exercise of administrative discretion. (Emphasis and underscoring supplied)

FAO 266 must be viewed in this context. BFAR, the government agency which possesses technical expertise and judgment in the field of the country's aquatic resources and marine ecosystems, has determined that the installation of VMS and ERS is the best course of action to combat IUUF. The Court cannot haphazardly substitute its judgment with that of the BFAR, especially upon the instance of *Royale Fishing et al.* which erroneously claim that they have been deprived of due process because the BFAR supposedly failed to comply with the public consultation requirement.

On this score, *Royale Fishing et al.* had admitted before the Court that it knew of the public consultations conducted relative to FAO 266 prior to its issuance. This judicial admission [73] requires no further proof [74] and removes the admitted fact from the field of controversy. [75]

ASSOCIATE JUSTICE DIMAAMPAO:

Fish processing Sub-sector, Academe, and NGO. Those are the 6. So, you are one of them. Upon the promulgation of this [FAO No. 266], were you not members of this council?

ATTY. NAVAL:

There is a representative of the commercial fishing sector, Your Honor, but when they formulate, of course, they have to formulate, of course, they have to agree and some of the members do not agree on the formulation of that, but they cannot do anything because it is a majority decision, Your Honor.

ASSOCIATE JUSTICE DIMAAMPAO:

So, you were heard in that, in the proceedings?

ATTY. NAVAL:

The representative of the commercial fishing company.

ASSOCIATE JUSTICE DIMAAMPAO:

So, you were clearly represented in that council?

ATTY. NAVAL:

Yes, Your Honor.[76]

Hence, Royale Fishing et al. had every opportunity to participate in the crafting of FAO 266 through the representative for commercial fishing companies. Since the opportunity to be heard is the essence of procedural due process, then Royale et al.'s claim that they were deprived of due process clearly has no leg to stand on.

Declaring FAO 266 unconstitutional contravenes the State's obligations under international covenants

According to the ponencia, there is no sufficient proof that the prevention of installation of the VMS in Philippine commercial vessels affected the external relations of the Philippines or its obligations under international instruments.[77] That there is yet no material effect on trade with the European Union following the issuance by the trial court of a permanent injunction against the enforcement of FAO 266, however, does not mean that there can be no sanction imposed on the Philippines.

It must be emphasized that the installation of VMS was legislated in pursuit of the policy for sustainability and conservation of fishery and aquatic resources which exists independent of, but parallel to the Philippines' international obligations. Republic Act No. 10654 applies to all Philippine waters, including the exclusive economic zones (EEZ) and the continental shelf, all aquatic and fishery resources, and to all Philippine-flagged fishing vessels operating in areas governed by a Regional Fisheries Management Organization, in the high seas or in the waters of other coastal states.[78] One of the declared policies of Republic Act No. 10654:

(c) To ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting and enhancing the quality of the environment. The Philippines shall pursue its commitment to international conventions and cooperate with other states and international bodies, in order to conserve and manage threatened aquatic species, straddling and highly migratory fish stocks and other living marine resources[.].[79] (Emphasis supplied)

In relation to the obligations within the EEZ[80] of coastal states and in the high seas[81] under the United Nations Convention on the Laws of the Seas (UNCLOS),[82] the Philippines is bound to implement conservation and management measures for the maintenance of living resources and to contribute and exchange scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks on a regular basis in cooperation with other states and organizations. Notably, there is no distinction under the UNCLOS as to the type of fish stock involved.

The 1995 United Nations Fish Stocks Agreement[83] likewise requires coastal states and states fishing on the high seas to adopt measures to maintain or restore fish stocks, apply a precautionary approach, collect and share complete and accurate data concerning fishing activities, vessel position, catch of target and non-target species and fishing effort in a timely manner, and to implement and enforce such conservation and management measures through effective monitoring, control and surveillance.[84]

The Philippines likewise acceded to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean[85] which adopted obligations similar to the obligations of parties under the United Nations Fish Stocks Agreement.[86] The Western and Central Pacific Fisheries Commission (WCPFC) issued Conservation and Management Measure No. 2011-02 which requires the implementation of the WCPFC Vessel Monitoring System within the Convention Area. Fishing vessels within the Convention Area must keep their automatic location communicator (ALC) or their real-time satellite position fixing transmitter activated for reporting to the WCPFC.[87] The minimum standards for ALC necessitates the

submission of the following data: (i) ALC static unique identifier; (ii) the current geographical position (latitude and longitude) of the vessel; and (iii) the date and time (expressed in Universal Time Constant [UTC]) of the fixing of the position of the vessel.[88]

It comes as no surprise, therefore, that the Philippines, through the BFAR, eventually adopted its own VMM in compliance with the minimum standards of its international obligations. Too, the Philippines legislated Republic Act No. 10654 specifically to address IUUF and to meet its obligations with its trade partners, particularly for traceability of catch. As explained by the OSG during the oral arguments:

ASSOCIATE JUSTICE ANTONIO T. KHO

Okay, I would like to relate this to the requirement of the EU. When the EU requires us by virtue of treaties or agreements, are there minimum information that they require and what are the minimum information required before we can issue the certification?

SOLICITOR GENERAL GUEVARRA:

Your Honor, based on the communication that I have seen the EU is basically requiring that our commercial vessels be equipped with a VMS. I am not privy if certain minimum information or data are being required but the underlying purpose of the EU in requiring us to comply with the vessel management, vessel monitoring measures or systems is to ensure traceability of the catch. In other words, a certification from our BFAR that the catch was not through any IUUF methods. If that's the case, Your Honor, I presume that the information on where, what, and how these fisheries products were caught would definitely be included in the information requested. (Emphasis supplied)

Apart from deterring IUUF, the VMS requirement was also intended by the BFAR to supplement its conservation measures and to generate the data that the Philippines is required to contribute and exchange under international instruments.

ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA

Okay, but BFAR, under its regulatory functions can require these systems, correct? In the same manner, you're saying that the BFAR can require the VMS?

SOLICITOR GENERAL GUEVARRA:

Yes, your honor. Precisely, the BFAR is requiring the VMS rather than something else, yes but this is their choice...

ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA

But these systems work, correct?

SOLICITOR GENERAL GUEVARRA:

Only if the vessels had them.

ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA

Yes, and the BFAR can require them to have them, correct?

SOLICITOR GENERAL GUEVARRA:

Yes, it's a matter of choice and the VMS was the choice.

ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA

Yes, but see the problem is, the problem for me in my confusion is that the VMS asks for something more – it asks that real time information is uploaded by the fishing boat at the time it makes a catch, correct?

SOLICITOR GENERAL GUEVARRA:

Yes, your honor.

ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA

Therefore, even if that vessel is not in a prohibited area, it's not in an overfished area, you're requiring that, correct?

SOLICITOR GENERAL GUEVARRA:

Yes, your honor.

ASSOCIATE JUSTICE ALFREDO BENJAMIN S. CAGUIOA

And that's exactly, I think, their bone of contention – why should that be required when that will give away their position and therefore give away their trade secrets when the government can, in fact, already monitor IUUF by virtue of these systems that you just mentioned?

SOLICITOR GENERAL GUEVARRA:

Your honor, the purpose of the VMS is not only to detect IUUF. It is also for the purpose of gathering all necessary scientific data as to catch, which areas are overfished, and so on and so forth. So that junction of collating data would be very useful for the BFAR in managing its conservation programs.

The OSG elaborates on the VMS as a tool for fisheries management:[89]

. . . It must be emphasized that FAO 266 was promulgated as a MCS tool to ensure the sustainability of the country's fisheries and marine resources. In simple terms, the VMS is a detection tool and is one of the recognized important tools now in the field of fisheries monitoring, surveillance and law enforcement operations. To understand the VMS further, the explanation of petitioner's expert witness, Rollan Geronimo, is worth highlighting:

. . . .

9. Question: How is this vessel monitoring system used in fisheries management?

Answer: The main use of VMS is for monitoring and surveillance as part of fishery law enforcement to combat illegal, unreported, and unregulated fishing. VMS enables fisheries managers to monitor the location of fishing vessels that are part of the system. With the VMS, fisheries managers are able to implement fishery laws more effectively, especially for provisions of the law that are spatial or location-dependent. Given that many of the Philippine fishery laws are tied to where the activity occurs (e.g., municipal waters, marine protected areas, etc.), VMS is a critical component of effective fisheries management in the country.

. . . .

Another use of VMS is to improve the quality, quantity, and reliability of fisheries data for fisheries stock assessments, which information is relevant for BFAR, in managing the country's fishery resources. The information on the location of catches and the catch itself (e.g., biomass, size of fish, types of fish caught, etc.) are often used by fisheries scientists to analyze the variability in fisheries production, develop more accurate and precise stock assessment models, and provide more concrete recommendations for fisheries managers and stakeholders on what to do to ensure that the fish stocks remain healthy. VMS data have been used to estimate fish biomass more accurately (Murray et al. 2013; Ducharme-Barth et al. 2018) and improve systematic marine

conservation planning.
. . . . (Emphasis in the original.)

Beyond being required by our domestic law to implement conservation measures and monitor fishing activities, these treaty obligations are binding on the Philippines. No less than the 1987 Constitution states that the Philippines "adopts the generally accepted principles of international law as part of the law of the land[.]"[90] This Court has held that "[o]ne of the oldest and most fundamental rules in international law is *pacta sunt servanda* — international agreements must be performed in good faith. 'A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties.'"[91]

Hence, not only is there an actual necessity for the VMS, but the Philippines is clearly obliged under several international agreements to implement an effective monitoring system for purposes of data collection, collation, and exchange, and for the implementation of conservation measures for the protection of the marine ecosystem in cooperation with other states.

All told, I vote to overturn the trial court's Decision in G.R. No. 256559 and declare that FAO 266 is not unconstitutional.

[1] Ponencia, p. 19.

[2] 936 Phil. 17 (2023) [Per SAJ Leonen, En Banc].

[3] Id.

[4] Executive Secretary Mendoza v. Pilipinas Shell Petroleum Corporation, 936 Phil. 538, 561 (2023) [Per SAJ Leonen, En Banc].

[5] 92 Phil. 864 (1953) [Per J. Labrador, En Banc].

[6] Id. at 867.

[7] Otherwise known as "The Philippine Fisheries Code of 1998."

[8] Draft Ponencia, p. 23.

[9] 744 Phil 497 (2014) [Per J. Velasco, Jr., Third Division].

[10] Id. at 509-510.

[11] Republic's Memorandum, p. 21.

[12] 937 Phil. 639, 644 (2023) [Per J. Zalameda, En Banc].

[13] The elements of a motion to intervene are: (1) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (2) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both elements must concur. See *Rep. of the Philippines v. Rubin*, 887 Phil. 600 (2020) [Per J. Lazaro-Javier, First Division].

[14] 900 Phil. 30 (2021) [Per J. Hernando, Third Division].

[15] Id. at 41.

[16] 479 Phil. 148 (2004) [Per J. Carpio, First Division].

[17] 564 Phil. 774 (2007) [Per J. Chico-Nazario, Third Division].

[18] Id. at 784-785.

[19] 328 Phil. 351 (1996) [Per J. Panganiban, Third Division].

[20] Id. at 361-362.

[21] *Air Philippines Corp. v. Pennswell, Inc.*, 564 Phil. 774, 786 (2007) [Per J. Chico-Nazario, Third Division].

[22] Ponencia, pp. 46-47.

[23] Id. at 50-51.

[24] REVISED RULES OF COURT, Rule 129, sec. 4. Judicial admissions. - An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[25] *Agbayani v. Lupa Realty Holding Corp.*, 853 Phil. 49, 67 (2019) [Per J. Caguioa, Second Division].

[26] *Mercene v. Government Service Insurance System*, 823 Phil. 200, 211 (2018) [Per J. Martires, Third Division].

[27] Ponencia, p. 44.

[28] 130 Phil. 415 (1968) [Per J. Fernando, En Banc].

[29] Id. at 433.

[30] *Standard Chartered Bank v. Senate Committee on Banks*, 565 Phil. 744, 762 (2007) [Per J. Nachura, En Banc].

[31] *Ong v. Senate of the Philippines*, 938 Phil. 929, 984 (2023) [Per J. Inting, En Banc].

[32] 354 Phil. 948 (1998) [Per J. Puno, En Banc].

[33] Id. at 980.

[34] CONST., art. 1.

[35] See *Federation of Coron v. Secretary of DENR*, 884 Phil. 564, 582 (2020) [Per J. Gesmundo, En Banc].

[36] 858 Phil. 765 (2019) [Per J. Hernando, En Banc].

[37] Id. at 811.

[38] Ponencia, pp. 50-51.

[39] *Sealanes Marine Services Inc. v. Dela Torre*, 754 Phil. 380, 391 (2015) [Per J. Reyes, Third Division].

[40] See CIVIL CODE, art. 3.

[41] *Air Philippines Corp. v. Pennswell, Inc.*, 564 Phil. 774, 784-785 (2007) [Per J. Chico-Nazario, Third Division].

[42] Draft Ponencia, pp. 59-63.

[43] *Smith, Bell & Company (Ltd.) v. Natividad*, 40 Phil. 136-155 (1919) [Per J. Malcolm, First Division].

[44] *Drugstores Association of the Philippines, Inc. v. National Council on Disability Affairs*, 795 Phil. 166 (2016) [Per J. Peralta, Third Division].

[45] 70 Phil. 726-735 (1940) [Per J. Laurel, First Division].

[46] *SPARK v. Quezon City*, 815 Phil. 1067, 1114 (2017) [Per J. Perlas-Bernabe, En Banc].

[47] *White Light Corp. et al v. City of Manila*, 596 Phil. 444, 462 (2009) [Per J. Tinga, En Banc].

[48] 410 U.S. 113 (1973).

[49] 564 Phil. 774 (2007) [Per J. Chico-Nazario, Third Division].

[50] *Id.* at 785.

[51] *Zomer Development Company, Inc v. Court of Appeals*, 868 Phil. 93, 116 (2020) [Per J. Leonen, En Banc].

[52] CONST. (1987), art. II, sec. 16.

[53] TSN dated November 21, 2023, p. 128.

[54] 3 Phil. 381 (1904) [Per J. Johnson, En Banc].

[55] Chris Wold, COUNTERMEASURES AND COST RECOVERY AGAINST FLAG STATES TO PREVENT, DETER, AND ELIMINATE IUU FISHING, *Environmental Law*, 2023. Vol. 53, No. 3 (2023), pp. 383-463.

[56] *Id.*, citing Establishment of a Vehicle Monitoring System 1, July 18, 2014, InterAm. Tropical Tuna Comm'n Res. C-14-02, at 1, <https://perma.cc/6LBV-8Q7K>; Conservation and Management Measure 2014-02: Commission Vessel Monitoring System 4, Dec. 5, 2014, W. and Cent Pac. Fisheries Comm'n, <https://perma.cc/LHW7-JQBZ>. For more on the Western and Central Pacific Fisheries Commission (WCPFC)'s VMS, see Vessel Monitoring System, W. AND CENT. PAC. FISHERIES COMM'N (Mar. 27, 2023), <https://perma.cc/Z3CS7FGC>. See also Office of International Affairs, Trade, and Commerce, International and Regional Fisheries Management Organizations, NAT. OCEANIC & ATMOSPHERIC ADMIN. (Feb. 13, 2023), <https://perma.cc/CBNS-WRTD>.

[57] Directorate of Fisheries, The Norwegian system for Satellite tracking of fishing vessels, https://web.archive.org/web/20070721061358/http://www.fisheries.no/management_control/Resource_management_control/ last accessed on November 30, 2025.

[58] National Oceanic and Atmospheric Administration, Enforcement: Vessel Monitoring, <https://www.fisheries.noaa.gov/topic/enforcement/vessel-monitoring> last accessed on November 30, 2025.

[59] *Id.*

[60] Iwao Fujii, Yumi Okochi, and Haijme Kawamura, Promoting Cooperation of Monitoring, Control, and Surveillance of IUU Fishing in the Asia-Pacific, *Sustainability* 2021, 13, 10231. <https://doi.org/10.3390/su131810231> last accessed on November 30, 2025.

[61] Vessel Monitoring System, Northwest Atlantic Fisheries Organization available at <https://www.nafo.int/Fisheries/ReportingRequirements/VMS> last accessed May 16, 2024.

[62] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[63] *Id.* at 90-91.

- [64] Republic Act No. 8550 (1998). The Fisheries Code of 1998.
- [65] Republic Act No. 8550 (1998), The Fisheries Code of 1998, secs. 16-25.
- [66] Executive Order No. 305 (2004).
- [67] Manila International Ports Terminal, Inc. v. Philippine Ports Authority, 918-A Phil. 144, 167 (2012) [Per J. Hernando, En Banc].
- [68] Id.
- [69] 938 Phil. 786 (2023) [Per J. J. Lopez, En Banc].
- [70] Id. at 925-926.
- [71] Republic Act No. 8550, as amended, Sections 2(c) and (g).
- [72] G.R. No. 242299, December 7, 2021 [Notice, En Banc].
- [73] See REVISED RULES ON EVIDENCE, Rule 129, sec. 4.
- [74] See REVISED RULES ON EVIDENCE, Rule 129, sec. 4; See *People v. Franco*, G.R. No. 230551, June 30, 2021 [Notice, First Division, citing *Silot, Jr. v. De La Rosa*, 567 Phil. 305, 512 (2008) [Per J. Quisumbing, Second Division].
- [75] *Alvero v. People*, 925 Phil. 786, 797 (2022) [Per J. Hernando, First Division], citing *Leynes v. People*, 795 Phil. 927, 936 (2016) [Per J. Perez, Third Division].
- [76] TSN dated October 10, 2023, p. 75.
- [77] Ponencia, pp. 79-80.
- [78] Republic Act No. 8550 (1998), as amended, sec. 3 (a) and (b).
- [79] Republic Act No. 8550 (1998), as amended, sec. 2 (c).
- [80] Article 61 of the UNCLOS states:
1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
 2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.
 3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
 4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
 5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

[81] Article 119 of the UNCLOS states:

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall: (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global; (b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.
3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

[82] The Philippines ratified the UNCLOS on May 8, 1984.

[83] The Philippines ratified the United Nations Fish Stocks Agreement on September 24, 2014.

[84] Article 5 of the United Nations Fish Stocks Agreement states:

General principles in order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

- (a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;
- (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
- (c) apply the precautionary approach in accordance with article 6;
- (d) assess the impacts of fishing, other human activities and environmental factors on target stocks. . . .
- (j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;
- (k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and
- (l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

[85] The Philippines signed the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean on September 5, 2000.

[86] Article 5 of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean states:

In order to conserve and manage highly migratory fish stocks in the Convention Area in their entirety, the members of the Commission shall, in giving effect to their duty to cooperate in accordance with the 1982 Convention, the Agreement and this Convention:

- (a) adopt measures to ensure long-term sustainability of highly migratory fish stocks in the Convention Area and promote the objective of their optimum utilization;
- (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States in the Convention Area, particularly small island developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
- (c) apply the precautionary approach in accordance with this Convention and all relevant internationally agreed standards and recommended practices and procedures;
- (d) assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks;
-
- (i) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes; and
- (j) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

[87] WCPFC Conservation and Management Measure 2011-02, pars. 4 and 5.

[88] WCPFC Conservation and Management Measure 2011-02, Annex I, par. 1.

[89] Rollo, pp. 2594-2596. Citations omitted.

[90] CONST., (1987), art. II, sec. 2.

[91] Tañada v. Angara, 338 Phil. 546, 592 (1997) [Per J. Panganiban, En Banc].

CONCURRING AND DISSENTING OPINION

INTING, J.:

I concur and dissent in part.

Briefly, in G.R. No. 256282, I agree with the ponencia that the Petition for Certiorari must be dismissed for having been rendered moot and academic by the decision on the merits of the Regional Trial Court (RTC), Malabon City.

I note the ponencia's adoption of my position that while Section 134 of Republic Act No. 10654 involves a matter of procedure on the issuance of a preliminary injunctive writ that is within the exclusive power of the Court under the 1987 Constitution, it has been approved and adopted by the Court through Office of the Court Administrator (OCA) Circular No. 87-2016. Still, I maintain my position that Section 134 and Rule II, Section 5 of the Rules of Procedure for Environmental Cases refer to the regulatory and quasi-judicial powers of an administrative agency. Hence, they cannot be applied in actions where the primary issue pertains to the constitutionality of environmental regulations issued by administrative agencies in the exercise of their quasi-legislative powers.

Instead, the writ of preliminary injunction subject of the present case is governed by Rule 58 of the Rules of Court. Based on this rule, I submit that the RTC did not act with grave abuse of discretion when it issued the injunctive writ because all the requisites thereof have been met, to wit: (1) Royale Fishing et al. have a right in esse over their trade secrets; (2) the assailed regulation constitutes a material and substantial violation of the right;

(3) There is an urgent need for the writ to prevent irreparable injury to Royale Fishing et al., who stood to lose their trade secrets through compulsory disclosure under Fisheries Administrative Order No. 266-2020 (FAO No. 266); and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

In G.R. No. 256559, I note that in assessing the constitutionality of FAO No. 266, the ponencia applied the rational basis test, considering that the present case only involves property rights. Still, I disagree with the ponencia that FAO No. 266 fails to pass the rational basis test. To my mind, Rule 65.2 of the Implementing Rules and Regulations (IRR) of the Fisheries Code was substantially complied with when FAO No. 266 was issued. Accordingly, I vote to grant the Petition in G.R. No. 256559.

Finally, in G.R. No. 257049, I agree with the ponencia that the Petition for Review on Certiorari must be partly granted. In my view, the RTC gravely abused its discretion when it refused the intervention of Oceana Philippines International et al. in the proceedings before it because the interests of the intervenors could not have been sufficiently protected in a separate proceeding. Further, denying the intervention would have resulted in multiplicity of suits and risked conflicting rulings by different courts.

Royale Fishing et al. correctly availed of the remedy of a Rule 63 petition for declaratory relief before the RTC, Malabon City, Branch 170 without violating the doctrine of exhaustion of administrative remedies

The ponencia does not find merit in the Republic's argument that Royale Fishing et al. should have first complied with Section 138(c) of Republic Act No. 8550 (Fisheries Code), as amended by Republic Act No. 10654, before filing their petition for declaratory relief with the RTC.[1] I agree.

Section 138 of the Fisheries Code clearly pertains to citizen's suits for the purpose of enforcing the provisions of the Fisheries Code and its IRR:

SEC. 138. Citizen's Suits. — For the purposes of enforcing the provisions of this Code and its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:

(a)

Any person who violates or fails to comply with the provisions of this Code and its implementing rules and regulations;

(b)

The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and

(c)

Any public officer who willfully or grossly neglects the performance of a duty specifically enjoined by this Code and its implementing rules and regulations; or abuses authority in the performance of duty; or, in any manner improperly performs duties under this Code and its implementing rules and regulations: Provided, however, That no suit can be filed until after fifteen (15) days notice has been given the public officer and the alleged offender and no appropriate action has been taken thereon. (Emphasis supplied)

A citizen's suit is intended to enable the enforcement of a citizen's environmental rights by liberalizing standing for cases enforcing environmental laws and collapsing the traditional rule on personal and direct interest, upon the

principle that humans are stewards of nature.[2]

In the case, *Royale Fishing et al.* did not file the petition for declaratory relief for the purpose of enforcing the provisions of the Fisheries Code and its IRR. On the contrary, it sought a permanent injunction against the implementation of FAO No. 266 and prayed for the RTC to declare unconstitutional and void Sections 14 and 119 of the Fisheries Code, which pertain to monitoring, control, and surveillance (MCS) over Philippine waters and Vessel Monitoring Measure (VMM), respectively.[3] These matters clearly do not pertain to the regulatory authority of the BFAR through the imposition of administrative fines and penalties; instead, they refer to the quasi-legislative powers of the BFAR.

Clearly, the Petition for Declaratory Relief of *Royale Fishing et al.* is not a citizen's suit that would fall within the coverage of Section 138 of the Fisheries Code. Thus, *Royale Fishing et al.* need not have complied with paragraph c of Section 138 before filing their petition for declaratory relief with the RTC.

Appeal was not available to *Oceana Philippines International (Oceana)*, *Pablo R. Rosales (Pablo)*, and *Ronaldo P. Reyes (Ronaldo)* because they are non-parties to the suit before the RTC; nonetheless, exceptional circumstances allow the Court to give due course to and rule on the petition in G.R. No. 257049

The ponencia finds that a Rule 65 petition for certiorari, not a Rule 45 petition for review on certiorari, was the correct remedy from the RTC's denial of the Motion to Intervene filed by *Oceana*, *Pablo*, and *Ronaldo* (collectively, *Oceana et al.*).[4] Nonetheless, the ponencia recognizes peculiar circumstances which allows the Court to relax procedural rules, give due course to the petition filed by *Oceana et al.* in G.R. No. 257049, and rule on the issue of whether the denial of their Motion to Intervene was proper.[5]

While I agree with the ponencia that a Rule 65 petition for certiorari was the correct remedy, it is worthy to note that the Court has previously decreed in *Foster-Gallego v. Spouses Galang*[6] that an order denying a motion for intervention is appealable:

True, this Court has on occasion held that an order denying a motion for intervention is appealable. Where the lower court's denial of a motion for intervention amounts to a final order, an appeal is the proper remedy, as when the denial leaves the intervenor without further remedy or resort to judicial relief.

However, the issue of whether petitioner correctly appealed the assailed orders of the trial court to the Court of Appeals is beside the point since petitioner did not interpose his own appeal. Petitioner merely joined *Gallego's* appeal from the trial court's decision.

A prospective intervenor's right to appeal applies only to the denial of his intervention. Not being a party to the case, a person whose intervention the court denied has no standing to question the decision of the court. Petitioner thus had no legal personality to join *Gallego* in assailing the decision of the trial court. Petitioner could question only the trial court's orders denying his intervention and striking off from the records his answer-in-intervention, not the decision itself.[7] (Emphasis supplied, citations omitted)

Previously, the Court also ruled that if the denial of the motion for intervention was attended with grave abuse of discretion, a petition for certiorari may be availed of.[8]

Still, in the more recent case of *Pillars Property Corp. v. Century Communities Corp.*[9] (*Pillars*), the Court held that under Rule 41, Section 1 of the Rules of Court, appeal is not a proper remedy from orders dismissing an action without prejudice. In such a situation, the appropriate remedy is a petition for certiorari under Rule 65 of the Rules of Court.

The petition filed by *Oceana et al.* in G.R. No. 257049 provides an opportunity for the Court to clarify the apparent conflicting rulings on the appropriate remedy from the denial of a motion for intervention.

I submit that Pillars is the case law to be observed. Although the denial of the motion for intervention is final as to the movant as it completely dispenses with the issue on intervention and leaves nothing else for the trial court to resolve insofar as the movant is concerned, the denial is without prejudice to the filing of a separate action under Rule 19, Section 1[10] of the Rules of Court. Hence, as stated in the ponencia and in accordance with Pillars, a Rule 65 petition for certiorari is the proper remedy from the trial court's denial of a motion for intervention.

Moreover, the remedy of appeal is not available to a non-party.[11] When a motion to intervene is denied, the trial court precisely prevents the movant from becoming either a plaintiff-intervenor or defendant-intervenor in the case before it. Otherwise said, with the denial of the motion, the movant does not become a party to the case where it sought to intervene. The movant, whose motion to intervene was denied and who never became a party to the proceedings, cannot avail of the remedy of appeal. In such a case, the appropriate remedy of the movant is: (1) to file a separate action, as allowed in Rule 19, Section 1 of the Rules of Court;[12] or (2) to file a Rule 65 petition for certiorari, as allowed by Rule 41, Section 1 of the Rules of Court in relation to Pillars.

It was grave abuse of discretion for the RTC to deny the Motion to Intervene filed by Oceana et al.

After review of the records and the ponencia, I am convinced that the RTC abused its discretion when it denied the Motion to Intervene of Oceana et al.

Oceana et al. attempted to join the cause of the Republic, as defendant, and sought leave from the RTC to be included in the proceedings as defendants-in-intervention. They therefore sought the continued implementation of FAO No. 266. They based their action on Section 138 of the Fisheries Code, as well as Section 5, Rule II of the Rules of Procedure for Environmental Cases (RPEC), which both refer to citizen's suits.

In resolving the Motion to Intervene, the RTC must be guided by Rule 19, Section 1[13] of the Rules of Court, which applies suppletorily[14] to cases governed by the RPEC. To allow intervention, it must be shown that: (1) the movant has a legal interest in the matter in litigation, or otherwise qualified; and (2) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding.[15] Case law dictates that the intervenor's "interest" in the proceeding refers to a direct interest in the cause of action as pleaded, and which would put the intervenor in the legal position to litigate a fact averred in the complaint.[16]

Relevantly, the Court has previously allowed intervention of strangers to a case because a separate action is not conducive to orderly judicial process, would violate the principles laid out against multiplicity of suits, and opens the possibility of one court reviewing the findings of another and rendering conflicting and confusing judgments.[17]

Further, while Rule 19, Section 1 of the Rules of Court grants the trial court the discretion to grant or deny a motion for intervention, case law provides that the trial court must exercise liberality in allowing interventions in the early stages of a lawsuit, especially when the motion for intervention was made before trial of the case, thereby giving the adverse party all the time to respond to the pleading-in-intervention and prepare for trial.[18]

Applying the foregoing, it is my humble opinion that the RTC gravely abused its discretion when it denied the Motion for Intervention.

First, the interest of Oceana et al. in the suit is the same as the Republic's as pleaded. Verily, the defenses raised by Oceana et al. against the petition for declaratory relief are the same as the Republic's, i.e., FAO No. 266 was a valid exercise of police power. Their arguments are ultimately premised on the same provisions of the 1987 Constitution, particularly, the Regalian Doctrine enshrined in Article XII, Section 2, as well as the people's right to a healthful and balanced ecology.

Second, a separate proceeding would not be sufficient to fully protect the rights of Oceana et al. Indeed, it was in the proceeding before the RTC where a preliminary injunction was issued against the continued implementation of FAO No. 266 and where it may be declared unconstitutional. It is the RTC that has control over the preliminary injunctive writs that it issued against FAO No. 266.

Third, a separate proceeding by Oceana et al. would necessarily involve the RTC's action of enjoining the implementation of FAO No. 266 and would raise the very same constitutional issues that are already being litigated before the RTC. A separation action would therefore result in multiplicity of suits and opens the possibility of conflicting rulings among different courts on the very same issues.

Finally, liberality in allowing Oceana et al.'s intervention is made manifest by the fact that they filed their Motion to Intervene on April 21, 2021 by registered mail, which was sent via electronic mail on April 27, 2021.[19] At that time, the proceedings were still at the early stages given that it was only in the Order dated April 6, 2021 in which the RTC directed the continuation of the proceedings for trial on the merits.[20]

It should also be pointed out that the RTC opined that the issues raised in the petition for declaratory relief were purely constitutional and legal.[21] Pure questions of law can be resolved on the basis of the pleadings,[22] and by simple reference to statutory construction and prevailing jurisprudence.[23] Given its stance on the matter, the RTC could have simply admitted the pleading-in-intervention of Oceana et al. and considered the arguments that they raised to resolve the extant constitutional and legal issues, which could be resolved even without presentation of evidence by Oceana et al. and without any further delay to the resolution of the case before it.

Section 134 of the Fisheries Code is not ineffective because it has been adopted and approved by the Court, but it applies only to cases subject of administrative adjudication before the BFAR and not to cases involving the constitutionality of the agency's quasi-legislative issuances

The ponencia does not rule on the constitutionality of Section 134[24] of the Fisheries Code because it was not raised as an issue in the proceedings a quo. Thus, it harmonizes the provision of law with the RPEC by holding that, as a general rule, only the Court can issue a Temporary Restraining Order (TRO) or writ or preliminary injunction (WPI) against lawful actions of government agencies that enforce environmental laws or prevent violations thereof, pursuant to Rule 2, Section 10 of the RPEC. By way of exception, Section 134 of the Fisheries Code allows first and second level courts to issue a TRO/WPI provided that: (i) the injunction shall lie only against the regulatory functions of the Department of Agriculture (DA) and the BFAR; and (ii) it cannot be issued ex parte.[25]

I agree with the ponencia that Section 134 of the Fisheries Code must not be struck down for being an unconstitutional congressional encroachment upon the rule-making power of the Court, but only because we have already adopted and approved the statutory provision through OCA Circular No. 87-2016.

It is settled that under Article VIII, Section 5(5) of the 1987 Constitution, the Court has the exclusive power to promulgate rules concerning pleading, practice, and procedure in all courts.[26] It is equally established that the power of the courts to issue preliminary injunctive writs is a procedural matter and is therefore within the exclusive rule-making power of the Court.[27]

Thus, in *Carpio-Morales v. Court of Appeals*,[28] the Court decreed that a statutory provision that prohibits courts from issuing preliminary injunctive writs is ineffective without the Court's consent, "as may be manifested by an adoption of the same as part of the rules of procedure through an administrative circular issued therefor[.]"

In the present case, Section 134 of the Fisheries Code has been approved and adopted by the Court through OCA Circular No. 87-2016:

OCA CIRCULAR NO. 87-2016

TO

:

All Judges of the First and Second Level Courts

SUBJECT

:

Prohibition against the Issuance of Injunctions or Restraining Orders against Government Agencies Enforcing Environmental Laws and Preventing Violations Thereof

Acting on persistent reports of continuous violations of rules and laws prohibiting the issuance of injunctions or restraining orders against government agencies enforcing environmental laws and preventing violations thereof, all judges of first and second level courts are hereby ENJOINED to STRICTLY OBSERVE Rule 2, Section 10 of the Rules of Procedure for Environmental Cases, which provides:

Section 10. Prohibition against temporary restraining order (TRO) and preliminary injunction. — Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environment laws or prevent violations thereof.

and Section 134 of the Philippine Fisheries Code of 1998, as amended by Republic Act No. 10654, which provides:

Section 134. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, and Preliminary Mandatory Injunctions. — No injunction or restraining order from the Municipal Trial Courts and Regional Trial Courts shall lie against the Department [Department of Agriculture] and BFAR [Bureau of Fisheries and Aquatic Resources] upon the ex parte motion or petition filed by any person or entity in the exercise by the Department and BFAR of its regulatory functions in support of the implementation of this Code.

For your information and strict compliance.

(SGD.) JOSE MIDAS P. MARQUEZ

Court Administrator

By adopting Section 134 of the Fisheries Code, the Court itself created an exception from Rule 2, Section 10 of the RPEC as regards the powers of courts, other than the Supreme Court, to issue preliminary injunctive writs against government agencies that enforce environmental laws.

Still, I submit that Section 134 of the Fisheries Code pertains only to cases within the scope of administrative adjudication in relation to the regulatory functions of the BFAR. Likewise, the RPEC only covers cases for the enforcement of environmental laws and does not govern actions assailing the legality or constitutionality of quasi-legislative issuances by the concerned government agency. Thus, Section 134 of the Fisheries Code or the RPEC cannot serve as a bar against the RTC's issuance of a preliminary injunctive writ against FAO No. 266, which was issued by the DA, through the BFAR, in the exercise of its quasi-legislative powers.

(i)

Section 134 of the Fisheries Code prohibits an ex parte TRO/WPI against the BFAR's exercise of its regulatory power to impose administrative fines and penalties.

A textual reading of Section 134 of the Fisheries Code reveals that the section in which it is found pertains to "Administrative Adjudication," which, in turn, refers to the power of the DA to impose administrative fines and penalties under the Fisheries Code, including, among others, the power to: (1) issue cease and desist orders and summarily eject violators;^[29] (2) issue notices of violation and confiscation orders of any fish catch and fishing gear;^[30] and (3) revoke licenses, blacklist, and deny entry to ports.^[31]

During the deliberations of the Committee on Agriculture and Food, the drafters of the amendments to the Fisheries Code mentioned their intention to expand the regulatory powers of the BFAR by allowing it to immediately enforce the provisions of the Code:

THE PRESIDING OFFICER [Mr. Horace R. Cruda]. Kung bigyan na lang ng blanket authority ang BFAR na pwede i-stop kaagad, confiscate na kaagad, tapos magkakaroon ng due process na mayroong –

MS. TAMAÑA [Atty. Rhaegee B. Tamaña]. Hindi ba may catch-all tayong ganoon?

THE PRESIDING OFFICER. Oo. Hindi ba pwedeng ganoon? Kung baga parang law enforcement function mo na pwede ka kaagad manghuli ngayon, tapos, magkakaroon ng proceedings. Kapag nalaman, 'di, isoli.

MS. TAMAÑA. Yeah.

MS. VITUG [Atty. Annaliza A. Vitug]. Para ngang ganoon, citation na nga – notice. Parang titikitan mo na nga lang siya. Ilalagay mo sa lisensiya niya[.]

THE PRESIDING OFFICER. Pero kailangan i-ensure mo pa rin iyong due process. Eventually, pwede pa rin siyang mag-apela.

MS. VITUG. Hindi. Hindi ba mayroon tayong ganoon notice, tapos kukumpiskahin na natin iyong catch? Bahala na siyang maghabol. May catch-all tayo noon.

....

THE PRESIDING OFFICER. Iyong authority of BFAR director to confiscate[.][32]

From the foregoing, it is evident that the intention of the lawmakers in including Section 134 in the Fisheries Code is to avoid a situation where the BFAR is prevented from immediately exercising its regulatory and quasi-judicial powers under the law through ex parte preliminary injunctive writs. This makes sense, considering that the matters covered by the chapter on administrative adjudication in the Fisheries Code involve technical matters concerning fishing activities within the expertise of the BFAR.

For instance, the purported violation of the law warranting administrative penalties may involve details on the specifications of fishing gears that are allowed for certain types of fish,^[33] the zones which are considered marine protected areas or fisheries reserves,^[34] gathering of aquatic species below the minimum size,^[35] and other matters of highly technical nature that are necessarily within the expertise of the BFAR and which could not be determined by the first and second level courts without the BFAR's participation. Consequently, a TRO/WPI cannot be issued ex parte by the first and second level courts to enjoin the BFAR from performing its regulatory functions.

The rationale against ex parte issuances of TRO/WPI does not apply in cases where it is the quasi-legislative power of the DA, through the BFAR, that is being assailed for purportedly being unconstitutional and/or illegal. In such a case, the matters involved are not highly technical but pertain to legal concepts and case law. Further, the determination of the constitutionality of a law is a matter that is unquestionably within the jurisdiction of the RTC.

Distinguishing between the power being exercised by an administrative agency, be it quasi-judicial or quasi-legislative, is crucial to determine when trial courts may act upon issues before it at the first instance. As explained by the Court in *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:^[36]

Determining whether the act under review is quasi-legislative or quasi-judicial is necessary in determining when judicial remedies may properly be availed of. Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts on the first instance as part of their judicial power, thus:

[W]here what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. . . .

However, in cases involving quasi-judicial acts, Congress may require certain quasi-judicial agencies to first take cognizance of the case before resort to judicial remedies may be allowed. This is to take advantage of the special technical expertise possessed by administrative agencies. *Pambujan Sur United Mine Workers v. Samar Mining Company, Inc.* explained the doctrine of primary administrative jurisdiction, thus:

That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.^[37] *[Italics in the original; emphasis supplied]*

In the present case, *Royale Fishing et al.* filed their Petition for Declaratory Relief with the RTC to assail the constitutionality and validity of FAO No. 266, which was issued by the DA-BFAR in the exercise of its quasi-legislative powers. Thus, the issue is not covered by Section 134 of the Fisheries Code, which pertains only to matters involving the regulatory and quasi-judicial powers of the BFAR.

(ii)

The RPEC is limited in scope and does not apply in cases involving the purported unconstitutionality or invalidity of an administrative issuance.

In *Social Justice Society Officers v. Lim*,^[38] the Court briefly touched upon the matter of the adequacy of the remedies under the RPEC to assail the constitutionality and validity of a zoning ordinance. In that case, the Court ruled that the actions enumerated in the RPEC, which is limited in scope, are inadequate when the controversy involves the constitutionality or validity of the issuance. Further, the RPEC was promulgated by the Court to achieve specific objectives, which do not include matters on the constitutionality or validity of a law or regulation:

To begin with, questioned is the applicability of Rule 65 of the Rules of Court to assail the validity and constitutionality of the Ordinance.

....

The scope of the Rules of Procedure for Environmental Cases is embodied in Sec. 2, Part I, Rule I thereof. It

states that the Rules shall govern the procedure in civil, criminal and special civil actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts, and the Regional Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

. . . .

(y) Provisions in C.A. No. 141, [. . .]; and other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources. (Emphasis deleted)

Notably, the aforesaid Rules are limited in scope. While, indeed, there are allegations of violations of environmental laws in the petitions, these only serve as collateral attacks that would support the other position of the petitioners — the protection of the right to life, security and safety.

Moreover, it bears emphasis that the promulgation of the said Rules was specifically intended to meet the following objectives:

SEC. 3. Objectives. — The objectives of these Rules are:

(a)

To protect and advance the constitutional right of the people to a balanced and healthful ecology;

(b)

To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;

(c)

To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and

(d)

To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

Surely, the instant petitions are not within the contemplation of these Rules.[39] (Emphasis supplied)

It should also be pointed out that under Rule 5, Section 1 of the RPEC, the reliefs that may be granted by the environmental court do not expressly include the power to declare a law or issuance void for being unconstitutional or illegal:

SECTION 1. Reliefs in a Citizen Suit. — If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.

In light of the foregoing, it is my position that the RPEC cannot be extended to cases where the primary issue to be resolved by the trial court is the constitutionality and/or validity of a regulation issued by an administrative

agency in the exercise of its quasi-legislative powers. Thus, the RPEC should not be applied in the present case where the controversy pertains to the constitutionality and validity of FAO No. 266. Consequently, Rule 2, Section 10 of the RPEC cannot serve as a bar against the RTC's issuance of the WPI against the continued implementation of FAO No. 266 pending resolution of the Petition for Declaratory Relief before it.

Instead, in the issuance of a TRO and/or WPI, the RTC should have been guided by Rule 58 of the Rules of Court and jurisprudence to determine whether such provisional reliefs may be granted *pendente lite*.

(iii)

The RTC did not gravely abuse its discretion when it issued a Writ of Preliminary Injunction, enjoining the BFAR from further enforcing FAO No. 266 pending resolution of the Petition for Declaratory Relief filed by Royale Fishing et al.

From the foregoing, I submit that the RTC did not gravely abuse its discretion when it issued a writ of preliminary injunction against the continued enforcement of FAO No. 266 *pendente lite* because all the elements necessitating the writ are duly supported by law and evidence.

First, as to the requirement of a right in esse, the RTC correctly recognized that Royale Fishing et al. possess proprietary interests over their respective fishing or trade secrets. Certainly, Section 4,[40] Republic Act No. 8293 or the Intellectual Property Code (IP Code) recognizes trade secrets or undisclosed information as intellectual property. Related to the IP Code are the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Paris Convention for the Protection of Industrial and Intellectual Property (Paris Convention), both of which have been adopted by the Philippines and form part of the law of the land.[41]

Jurisprudence also recognizes trade secrets as property, their privileged nature, and their exemption from compulsory disclosure under the Constitution and other relevant laws.[42] Further, Section 127[43] of the Fisheries Code and Section 23[44] of FAO No. 266 both prohibit the disclosure of sensitive commercial information collected through the VMM or Vessel Monitoring System (VMS) required by the BFAR. In fact, Section 2(u)[45] and Section 23[46] of FAO No. 266 recognize data from the VMS or VMM as "sensitive technical information."

Significantly, it has been held that when the owner exercises reasonable efforts to protect the information, data on the geographical coordinates of fishing spots or the location of fishing reefs are trade secrets.[47] Here, as correctly pointed out by the ponencia, Royale Fishing et al.'s trade secrets consist of their data on fishing spots, and they have exercised reasonable efforts to protect the said data from disclosure.[48] As such, the element of a right in esse for a WPI to issue was sufficiently met.

Second, it is indubitable that FAO No. 266 on the installation of VMS constitutes a material and substantial invasion of Royale Fishing's rights over their trade secrets. Even the regulation itself recognizes that the data to be disclosed and collected by the VMS is sensitive commercial information, as previously mentioned.

Third, there was an urgent necessity to issue a WPI to prevent serious damage to Royale Fishing et al. Verily, it has been held that a trade secret derives economic value from being generally unknown and not readily ascertainable by the public.[49] Thus, protection from disclosure is necessary because once the information is no longer secret, its value is lost forever and can no longer be retrieved.[50] Moreover, Royale Fishing et al. alleged that there are individuals outside the BFAR who have access to data collected from the VMS, such as the persons from SRT Marine and the contractual hires of BFAR.

Finally, Royale Fishing et al. had no other speedy and adequate remedy under the law. Indeed, at the time that it applied for a WPI from the RTC, FAO No. 266 was already being implemented by the BFAR. Moreover, as

revealed during the oral arguments, other fishing vessels have already been complying with the VMS requirements of FAO No. 266.

Given the situation, there were justifiable reasons for the issuance of a WPI in favor of Royale Fishing et al. The WPI was necessary so that the very right sought to be protected by Royale Fishing et al. and any decision by the courts on the merits will not be rendered moot by the continued implementation of the assailed regulation.[51]

It is equally important to note that there has been no prior resolution by the Court on the effect of legal compulsion for proprietors to disclose their trade secrets to the government as an incident of the State's exercise of police powers. Plainly, whether a trade secret is destroyed by disclosure to the government as required by a regulation is a novel issue. It is therefore more prudent to enjoin the implementation of FAO No. 266 pending litigation.

While it is recognized that trade secrets are entitled to protection as property, they are not information covered by the constitutional right to privacy

The ponencia holds that fishing activities constitute trade secrets, which are proprietary rights that do not fall within the protection of the constitutional right to privacy.[52] I agree.

It cannot be denied that Royale Fishing et al. have proprietary rights over their trade secrets.[53] To this extent, Royale Fishing et al. are correct to insist that they have proprietary rights over their compilation of data regarding their fishing grounds.

Still, trade secrets are not information that are protected by the constitutional right to privacy. The right, as an inherent concept of liberty recognized in our jurisdiction,[54] refers to the right to be free to choose to be a "unique individual," to decide how to live one's life, and to make personal choices that are intimately related to a person's own definition of his or her humanity.[55] Clearly, the right to privacy pertains to highly intimate and personal matters concerning an individual's humanity, not to data concerning one's business or commercial transactions.

Relevantly, cases decided by American courts on issues involving their constitution, which heavily influenced our own fundamental law,[56] possess persuasive effect in our jurisdiction.[57] In this regard, courts of the United States (US) have clarified that the right to privacy has two aspects, namely: (1) the decision-making or autonomy zone of privacy; and (2) the interest in avoiding disclosure of personal matters or on confidentiality.[58] These zones of privacy are limited to "fundamental personal rights" that are "implicit in the concept of ordered liberty," or those that relate to "intimate personal relationships or activities," such as marriage, procreation, contraception, family relationships, and child rearing.[59] Matters within a zone of privacy are accorded the status of fundamental rights; hence, in constitutional cases involving such matters, the standard of strict scrutiny must be applied and the government must show a compelling state interest in requiring their disclosure.[60]

While the foregoing enumeration on the zones within the scope of privacy is not exclusive, it certainly cannot be denied that trade secrets are not highly intimate or personal matters that may be subsumed under the right to privacy. As explained by a US District Court in *Falcon Ridge Dev. V City of Rio Rancho*,[61] although a trade secret is considered proprietary information that is protected from disclosure, it is not a fundamental right that is "personal or intimate," and therefore, outside the scope of the right to privacy. To hold otherwise would trivialize the Due Process Clause under the Fourteenth Amendment of the US Constitution.

In the present case, while Royale Fishing et al. have an interest in protecting their trade secrets, the information pertains to business or commercial transactions, not to information that are highly intimate or personal in nature as to fall within a zone of privacy. Thus, the standard of judicial review to be applied in assessing the

constitutionality of FAO No. 266 is the rational basis test.

When there is a legitimate interest in confidentiality of matters that are not accorded the status of a fundamental right, the State need only show a rational basis for the required disclosure of the information

When disclosure of confidential information is required by state regulation, the court must first determine whether the information sought to be elicited concerns a fundamental right or a protected zone of privacy.[62] Where a fundamental right is involved, there must be compelling state interest to uphold the constitutionality of the regulation.[63] On the other hand, when a right to confidentiality is recognized but not afforded fundamental status, the state need only show a rational basis for the regulation.[64] When the data subject of compulsory disclosure is not concerned with a fundamental right on highly intimate or personal matters, the court must still weigh the impact and threat of disclosure against the state interest involved, but the standard under which the court should review the law or regulation is not strict scrutiny, but rational basis.[65]

Under the rational basis or rational relationship test, laws, ordinances, or regulations may be upheld if they rationally further a legitimate governmental interest,[66] and there is a reasonable connection between it and the means employed to achieve it.[67] The test usually applies in cases involving economics or to any other case not involving a suspect class.[68]

Thus, the Court has applied the rational basis test when it comes to regulations affecting natural resources.[69] The reason behind the rule is the Regalian Doctrine or the State's ownership of all natural resources under Article XII, Section 2 of the Constitution. Pursuant to the Regalian Doctrine, a license to exploit natural resources merely evidences a privilege to do so and cannot be considered as an absolute or irrevocable right to engage in such activity.[70] Thus, "[t]o fish is a privilege accorded by the State, and the question of individual enjoyment is one of public privilege, and not of private right[.]"[71]

Hence, operators of commercial fishing vessels engaged in the privilege of fishing over Philippines waters cannot be considered as a suspect class as to warrant a standard of review higher than rational basis. Consequently, when a case is filed assailing the constitutionality of a government regulation involving the conservation and management of marine resources, the courts must apply the rational basis test.[72]

FAO No. 266 passes the rational basis test

When the standard of review is rational basis, the State's exercise of police power may be upheld only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[73]

Contrary to the ponencia's conclusion, I respectfully submit that both requisites have been met in the present case.

(i)

The VMS under FAO No. 266 serves a legitimate government interest.

The State has legitimate interests (1) in the conservation and management of natural resources, which includes actions against illegal, unreported and unregulated fishing (IUUF); and (2) in the maintenance of a balanced and healthful ecology. Both these interests are recognized in the Constitution. Verily, fishing within Philippine waters must be under the full control and supervision of the State under Article XII, Section 2 of the Constitution. Because the "fish belong to the people," the State has "a right to regulate and inspect the commercial operations of those accorded the privilege of taking the fish." [74]

The State's interest in the conservation and management of marine resources is further provided in Section 14 of

the Fisheries Code, which directs the DA, in coordination with local government units (LGUs), Fisheries and Aquatic Resources Management Councils (FARMCs), the private sector and other agencies concerned, to establish an MCS system "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."

(ii)

The VMS and Electronic Reporting System (ERS) under FAO No. 266 are reasonably necessary to serve the government interest.

There is a reasonable connection between the foregoing State interests and FAO No. 266.

Indeed, monitoring fishing vessels by tracking their activities and location over the Philippine waters at any given time is ultimately related to the legal framework against IUUF and the prevention of or prosecution for its violations. The Court must especially consider that many of the forms of IUUF relate to specific areas over thousands of miles of Philippine waters where fishing may be prohibited, e.g., prohibition against fishing in marine protected areas,[75] fishing during closed season,[76] prohibited use of superlight or fishing light attractors within municipal waters,[77] and prohibition against fishing within municipal waters by commercial fishing vessels.[78]

Because allowable and prohibited fishing activities vary from one designated area to another, it follows that the BFAR has an interest in tracking and knowing the location of commercial fishing vessels over any specific portion of the Philippine waters at any given time. This is achieved through, among others, the requirement for commercial fishing vessels to comply with the rules on fisheries observers[79] and vessel monitoring.[80]

Pertinently, in *Balelo v. Baldrige (Balelo)*,[81] a regulatory measure requiring commercial fishing vessels to consent to a government agent on board for the purpose of observing their fishing activities and ensuring compliance with fisheries laws has been considered as reasonably necessary to achieve the purpose espoused by the law. In so holding, the U.S. Court of Appeals considered the difficulty in enforcing the law over a wide expanse of the seas, such that it was reasonably necessary for law enforcement to require fish observers on board the commercial fishing vessels.

The VMS and VMM required by FAO No. 266 are precisely geared towards the same purpose as in *Balelo*, i.e., the enforcement of fisheries laws over Philippine waters, and the establishment of an MCS system under Section 14 of the Fisheries Code.

In both *Balelo* and the present case, the extent of government intrusion is the same: each commercial fishing vessel is required to carry an observer or electronic device that allows the relevant law enforcement agents to track and determine the whereabouts and activities of the fishing vessel within a specific area of the Philippine waters at any given time.

The ponencia holds that the Republic "miserably failed to provide any evidence to show that VMS is more effective or even as effective as manual reporting in preventing unregistered fishing, unreported fishing, and the use of illegal fishing equipment, among others." [82] It relies on FAO No. 260, Series of 2018 on less intrusive means to regulate the fishing industry.[83] It points out that the risk of human manipulation of the data reported is present in both manual and electronic reporting of fish catch.[84]

Respectfully, I disagree.

FAO No. 260 is limited to Philippine flagged vessels "targeting straddling and highly migratory fish stocks." On

the other hand, FAO No. 266 is intended to apply to all commercial Philippine flagged vessels.

Further, the government need not resort to alternative means of monitoring the fishing vessels when the other methods are cost prohibitive or provide inaccurate or insufficient data.[85] In this case, the present post-fishing operation manual reporting system required by the BFAR, i.e., the submission of fishing logbooks, is subject to inaccuracies and has been found insufficient for catch documentation. As explained in Executive Order No. 154 dated December 6, 2013, entitled, Adopting a National Plan Of Action To Prevent, Deter, And Eliminate Illegal, Unreported, And Unregulated Fishing, And For Other Purposes:

IV.C. Authorization to Fish for Filipino/Local Vessels

....

One of the conditions in the license issued to commercial fishers is for their catcher vessels to have fishing logbooks. The logbook shall reflect the fish catch, fishing area, quantity in tubs/boxes or kilograms of fish catch, spoilage, landing point, transshipment and/or other means of disposal for a period of 5 years from the last entry. These shall be made within 24 hours after the catch was made and shall be written legibly in ink or ballpen (Section 22, FAO [No.] 198). Thus far, the logbook system for CFVL has been characterized by unreliable and inaccurate fishing statistics (Barut and Labe 2004). The BFAR will explore other catch documentation schemes that will eventually replace the existing logbook system. (Emphasis supplied)

Also, the fishing logsheets under Section 24(d), FAO No. 198-1, S. 2018 are not submitted daily. As mentioned during the interpellations, the fishing logs are submitted to the BFAR only when the commercial fishing vessel returns to the port from its fishing operations, which could take months at sea.[86] Given the situation, the BFAR issued FAO No. 266 to strengthen the monitoring, control, and surveillance system of the government over Philippine waters. With FAO No. 266, the ERS requires the vessels to provide one catch report per day.[87]

That the human on board the vessel may misrepresent the data submitted in either manual or electronic reporting is immaterial. What matters is that the daily catch report under FAO No. 266 may be cross-checked with the location of the fishing vessel at the time of the report. That is, the fish catch reported would be immediately verifiable when performed daily because in such a case, the BFAR, with the tracking system in place, knows where the vessel has been and where it is, and may therefore intercept the vessel at any given time to conduct on-board inspection and confirm if the fish catch reported is accurate and correct.

I emphasize that while the manual reporting system may be less intrusive, the present case only calls upon the Court to check whether the State exercised its police power, through FAO No. 266, within the bounds of the Constitution. It is not the function of the Court to supplant the discretion of the Executive in the best way to regulate the fishing industry;[88] otherwise, the Court would violate the principle of separation of powers.

As the regulatory body precisely charged with the duty to conserve and manage the country's marine resources, it is the BFAR, not the Court, which possesses superior knowledge and technical expertise on the establishment of an MCS system over Philippine waters that will accomplish the objectives of the Fisheries Code. Unless there is grave abuse of discretion, which has not been established by *Royale Fishing et al.* in the case, courts must not interfere "in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies." [89]

(iii)

The VMS and ERS under FAO No. 266 are not unduly oppressive

The MCS measures required by FAO No. 266 are also not unduly oppressive.

A property right over a trade secret is extinguished once it is disclosed to others, including state authorities, who are under no obligation to protect the confidentiality of the information, or who are not prohibited from publicly disclosing the secret.[90] In such a case, the compulsory disclosure of the trade secrets becomes a form of taking, for which the owners of the confidential information must receive a benefit of real value from the State to compensate them for their loss.[91]

Still, not all police power measures result in the impairment or loss of a trade secret. Despite the law compelling disclosure of trade secrets, the government may make an assurance to keep the information confidential.[92] A general proviso under the laws on freedom of information, which exempts confidential information from disclosure, is sufficient assurance by the State to keep the trade secret private.[93] In such a case, the confidentiality of the trade secret is maintained despite compulsory disclosure to State authorities.[94]

A speculative damage in case of future or potential data breach and consequent access to the information by competitors is not sufficient justification for the owner to decry any supposed violation of its interest over its trade secrets that are required to be shared with the government, which assured the confidentiality of the information. Competitive harm flows from the affirmative use of the information by competitors.[95] In collecting data under FAO No. 266, the government acts in the capacity of a regulator, not a fishing competitor. Thus, mere disclosure of the information to the government, who has assured the confidentiality of the trade secret, cannot be considered as harmful or oppressive to the owner of the trade secret.

In the absence of such assurance of confidentiality, the statute must be examined in the context of regulatory taking. If disclosure is required in exchange for real benefits from the State other than leave or permission for the proprietor to continue its business, then the law must be upheld as a valid exercise of police power.[96]

Prescinding from the foregoing, it is my assessment that FAO No. 266 does not impair the right of Royale Fishing et al. to the protection of their trade secrets and is not unduly oppressive because under several laws and issuances, the government made express assurances to keep the information confidential and private.

The assurance from the government to keep the information private and confidential is found in Section 127[97] of the Fisheries Code, as amended, as well as Section 23[98] of FAO No. 266. The Freedom of Information Manual of the DA also recognizes that among the exception to disclosure to the public is "information, documents, or records known by reason of official capacity and are deemed confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigations conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers." Memorandum Circular No. 15 dated March 17, 2023 expanded the list of exceptions to specifically include "[t]rade secrets, intellectual property, business, commercial, financial, and other proprietary information."

Even if there was failure on the part of the BFAR to observe the confidentiality of the sensitive commercial information provided through the VMS and ERS, the same is not a ground to declare FAO No. 266 unconstitutional. I stress that there are already protections extended to Royale Fishing et al.'s trade secrets under the pertinent laws and regulations. That the government agencies concerned failed to properly apply the laws and regulations on confidentiality does not mean that there is no protection at all. At most, the lapses in maintaining the confidentiality of the information may only be used as a ground for administrative or criminal actions against the erring public officials.

(iv)

The VMS and ERS under FAO No. 266 do not exceed the parameters of MCS under Section 14 of the Fisheries Code.

The ponencia concludes that FAO No. 266 exceeded the parameters of Section 14 of the Fisheries Code. It holds that Section 14 and of the Fisheries Code "does not include the recording of the destination or places where fish operators conduct their fishing activities." [99]

Respectfully, I disagree.

First, Section 4(55) of the Fisheries Code states that monitoring refers to the requirement of continuously observing fishing efforts:

55. Monitoring, control and surveillance —

- Monitoring — the requirement of continuously observing: (1) fishing effort which can be expressed by the number of days or hours of fishing, number of fishing gears and number of fisherfolk; (2) characteristics of fishery resources; and (3) resource yields (catch);
- Control — the regulatory conditions (legal framework) under which the exploitation, utilization and disposition of the resources may be conducted; and
- Surveillance — the degree and types of observations required to maintain compliance with regulations. (Emphasis supplied)

That the VMS and ERS under FAO No. 266 fall within the requirement of "continuously observing" fishing efforts need not be belabored. Indeed, based on the deliberations of the lawmakers for the amendment of the Fisheries Code, the drafters clearly intended Section 14 to be the basis for the power of the government to continuously monitor when and where fishing vessels are operating by requiring them to carry a VMS on board:

MR. PEREZ [Atty. Asis Perez]. . . . The guidelines also speaks of "the Senate must have effective monitoring, control and surveillance system from the commencement through the point of landing and final destination." So this is a very important element. So, from the commencement of fishing, when you are about to go fishing, the government should be able to monitor where you are, when you are fishing. After you fished and when you land your catch, there has to be effective monitoring, control and surveillance of these aspects.

. . . .

That's why we need to implement what we call the "Vessel Monitoring System" in accordance with the national and regional international standards including the requirement for national vessels to carry VMS on board. So, we have these guidelines and we are simply putting these guidelines in our legislation. [100] (Emphasis supplied)

The lawmakers were also clear that the VMS to implemented by the government is geared towards traceability and intended for monitoring of the catcher and carrier vessels wherever they are located:

MR. PEREZ. . . . Naiintindihan po naming iyong concern po ng ating sector kasi commercial fishing operation po kasi marami pong klaseng bangka. Mayroon po diyan iyong catcher, mayroon po iyong ranger boat, mayroon po iyong lifeboat. At definitely, hindi po natin nirerequire iyong maliliit na iyon, catcher lang po at saka iyong malalaking carrier. That is for purposes of traceability lang. And then, of course, what we can guarantee them is that we're looking for various providers. We're going for the lowest cost. At saka hindi ho siya VMS lang, VMS measure ho ang tawag. So it can be the radio base, it can be the satellite base. Pwede pong radio base lang eh. So hindi ho kailangan ang satellite base kasi po iyon iyong mahal. Mayroon po kasing mga lumalabas ngayon na radio base na mas malapit - lalo na po iyong hindi naman masyadong lalayo, pwede na po iyan. Ang importante po we are able to monitor where they are located. So it's not necessarily po vessel monitoring system na alam po nating satellite, ito po ay VMS measure - vessel monitoring measure. Meaning as long as we're able to monitor them, it doesn't have to be satellite base because which is the one na mas mahal po iyon. [101]

The government being able to track the location of fishing vessels over Philippine waters, through the use of monitoring technology such as a global positioning system (GPS), was precisely subsumed within MCS under Section 14 of the Fisheries Code, as discussed by the lawmakers when amending the Fisheries Code:

MS. VITUG. And then 106-E, "Non-compliance with vessel monitoring measures." The same din, this is a conservation and management measure on fishing capacity.

THE PRESIDING OFFICER [Mr. Horace Cruda]. Mayroon tayong definition ng "vessel monitoring measures"?

MS. VITUG. Wala.

THE PRESIDING OFFICER. O may description somewhere in the Fisheries Code kung ano iyong "vessel monitoring measures"?

MS. VITUG. There is a catch-all provision on monitoring control and surveillance. . . .

. . . .

MS. VITUG. Iyan iyong "vessel monitoring." So iyong vessel monitoring measures, mahirap kasi i-define siya kasi if we use an international standard, it may not be applicable to us. So it should be low-tech measure. That's why it may be something like cellphone lang or ano but even fisherfolks do not have cellphone na may GPS.

THE PRESIDING OFFICER. Lahat ng cellphone ngayon, nata-track na iyan.

. . . .

MS. VITUG. Oo. May limited radius lang. Parang ano lang siya, anything that would be able to show that municipal fishing vessel is fishing in the fishing area where he is supposed to fish, parang ganoon lang iyong "vessel monitoring measures." [102] (Emphasis supplied)

Further, the term "monitoring" under Section 14 of the Fisheries Code does not exclude the use of an electronic positioning system. While "fishing effort" can be expressed by "the number of days or hours of fishing, number of fishing gears and number of fisherfolk", the said provision of law does not purport to be an exhaustive enumeration of the factors to be considered by the BFAR in adopting a vessel "monitoring system." In addition, the term "characteristics" of fishery resources is broad enough to include their point of origin at any designated area of the Philippine waters.

Second, Section 14 of the Fisheries Code categorically states that the "MCS system shall encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch." From the wording of the law, monitoring and surveillance may include tracking the location of fishing vessels over specific areas within Philippine waters at any given time, so that its espoused objective is achieved, i.e., conservation and management of fisheries and aquatic resources in Philippine waters.

Third, the Legislature directed the DA to promulgate the implementing rules and regulations of the Fisheries Code "in consultation with concerned government agencies and stakeholders." [103] Significantly, Rule 4.1(r) of the IRR of the Fisheries Code, as amended, provides that a "vessel monitoring system" refers to "a satellite-based system used to track and monitor the position, course and speed of the vessels at any given time for the purpose of management of fishing effort and fisheries resources and for traceability." Thus, the IRR of the Fisheries Code, which was prepared with the participation of stakeholders such as Royale Fishing et al., and which has the force and effect of law, [104] allows BFAR to require a VMS that tracks the position of fishing vessels at any given time.

Fourth, Section 127 of the Fisheries Code, as amended, recognizes that the VMM requirement may result in the disclosure of sensitive commercial information, which was why sanctions were imposed in the event of unauthorized disclosure:

SEC. 127. Unauthorized Disclosure of Sensitive Technical Information. – Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information. Any unauthorized disclosure of said data including all other data referred to in Section 155 in this Code, by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

Significantly, the issue on data collection of fishing grounds through the VMS was raised before the lawmakers at the time when the Fisheries Code was being amended. Section 127 was therefore included precisely to assure the fishers that their trade secret will remain confidential and that the VMS will not result in the disclosure of the fishing grounds to competitors:

MR. TAN [Mr. Georgie Tan]. Good morning, Madam Chair.

Kasi po iyon na problema namin diyan kasi iyong fishing industry po, mayroon kanya-kanyang – Kasi pagka mayroon tayong VMS, medyo – mayroon kaming sariling operations na --- mayroon kaming traditional na fishing ground na dapat po hindi malaman ng ibang kalaban namin. Kaya dapat po diyan, kung may VMS diyan, malalaman nila ang mga fishing ground naming na kinukunan naming. Isa ho iyon sa trade secrets namin sa fishing industry.

....

MR. PEREZ. Just to answer the first one. Una po, we understand that some information might be – ang tawag po diyan, operational data. Some of our fishermen are very conscious about their own operational data. They don't want to reveal their fishing ground to others, of course. That's been the argument even in the international world. But that does not prevent countries from imposing the system.

....

THE CHAIRPERSON (SEN. [Cynthia] VILLAR). It's something that we cannot do away.

MR. PEREZ. We cannot do away. But we are instituting measure po. Ang gagawin ho namin dito, iyong hong – limited access po iyong information.

THE CHAIRPERSON (SEN. VILLAR). Hindi ba iyong vessel monitoring system is for you to regulate not to tell their competitors about it.

MR. PEREZ. Yes, ma'am, for us to regulate.

THE CHAIRPERSON (SEN. VILLAR). How do you keep the confidentiality?

MR. PEREZ. Yes, ma'am. The confidentiality of the information will be guarded.

THE CHAIRPERSON (SEN. VILLAR). How do you see to it that there is confidentiality, iyong mga nasa ating agriculture sila ang ka-connive.

MR. PEREZ. Ma'am, ganito po ang mangyayari diyan. Maybe we will institutionalize a system where only accountable officers are allowed access to the information. Mataas po ang level ng authorization for you to be able to see the data. And we can do it in such a way that while there is transparency. in the access, not everybody has an access to protect po the information that the fishing company might deem to be confidential.

THE CHAIRPERSON (SEN. VILLAR). Ba't hindi natin lagyan ng penalty iyong pag may confidential data tapos linabas mo at na-prove ka mayroong penalty iyon. MR. PEREZ. That will be considered, ma'am, puwede

pong ilagay.

THE CHAIRPERSON (SEN. VILLAR). Ilagay natin sa bill, doon sa ano ng vessel. Ito, question ito sa VMS. Doon sa section na iyon, lagyan natin ng penalty na "This is a confidential data –

MR. PEREZ. Unauthorized disclosure.

THE CHAIRPERSON (SEN. VILLAR). ... unauthorized disclosure is penalized by law." Lagyan natin ng penalty. Is that okay with you?

MR. PEREZ. Yes, ma'am.[105] [Italics supplied]

Evidently, the lawmakers were aware that the implementation of the VMM and VMS compels the fishers to disclose their fishing grounds to the government. To maintain the confidentiality of the data and assure the fishers that their secrets will not be disclosed to their competitors, Section 127 of the Fisheries Code on unauthorized disclosure was included.

Finally, Section 4(13)[106] of the Fisheries Code, as amended, indisputably recognizes that the regulatory measures for conservation and management of fisheries includes international agreements entered into by the Philippines, including undertakings that the Philippines must comply with as a member of the relevant Regional Fishing Management Organization (RFMO). To emphasize that such international agreements and RFMO resolutions have the force of law in the Philippines, Section 118[107] of the Fisheries Code penalizes those who fail to comply therewith.

In this regard, Executive Order No. 154 (E.O. No. 154) dated December 6, 2013, entitled, "Adopting a National Plan Of Action To Prevent, Deter, And Eliminate Illegal, Unreported, And Unregulated Fishing, And For Other Purposes[.]" identifies the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU) as among the international agreements over fisheries that the Philippines entered into. One of the requirements of IPOA-IUU is the establishment of an MCS system to prevent, deter, and eliminate IUUF, including the adoption of a vessel monitoring system:

The Philippines complies with the MCS requirements of [Regional Fisheries Management Organizations (RFMOs)] to which it is a party. A Vessel Monitoring System (VMS) is already in place and is being implemented in accordance with the requirements of RFMOs such as the [Western & Central Pacific Fisheries Commission (WCPFC)], [International Commission for the Conservation of Atlantic Tunas (ICCAT)] and [Indian Ocean Tuna Commission (IOTC)]. The VMS covers Philippine flagged fishing vessels operating in High Seas Pocket Number 1 and fishing grounds under the jurisdiction of other RFMOs.

Several trainings have been conducted by BFAR for the implementation and management the VMS, which functions are primarily being undertaken by the National and Regional Fisheries Monitoring Centers.

Through Fisheries Administrative Order 241, all Philippine flagged fishing vessels operating in the high seas are required to install transponders. Within the Philippine EEZ, the VMS has been tested on selected purse seine, ring net and longline fishing vessels. (Emphasis supplied)

In compliance with the IPOA-IUU, the DA issued FAO No. 241, s. 2012, which required vessels in the high seas that are covered thereby to install an automatic location communicator (ALC) or mobile tracking-transceiver unit for the purpose of vessel monitoring. In addition to the foregoing, E.O. No. 154 mentions that IPOA-IUU directed the Philippines to cooperate with other member-states to enable the "strengthening and enhancement of integrated MCS systems, including satellite monitoring systems."

The VMS requirement under international agreements was even among the prime considerations in the amendment of the law, as revealed by the deliberations of the lawmakers in the process of amending the Fisheries

Code:

MS. VITUG [Atty. Annaliza A. Vitug]. So, sa legislation naman ho, nabanggit na po ng ating mahal na senador iyong mga initiatives sa Congress ngayon. Ito ho iyong maaring itaguyod ng ating senadora na mga panukalang batas.

Unang-una ho iyong pagbabago ng ating batas pangisdaan, ang Fisheries Code para ho masupil ang illegal, unreported and unregulated fishing at maipatupad iyong ating commitment under international treaties gayo ho ng United Convention on the Law of the Sea at iyong mga commitments natin under treaties ho organizing or creating iyong mga regional fisheries management organization managing iyong tuna and tuna stock. Miyembro ho tayo ng WCFPC, Indian Ocean Tuna Commission, at International Commission for the Conservation of Atlantic Tunas.....At nakikita ho nila na mayroon po tayong kakulangan. Mababa po iyong penalties at medyo ho iyong ating municipal waters ay kulang pa ho iyong ordinansa at mga fish sanctuaries. Napakaliit ho. Wala ho tayong masyadong nai-implement na mga punitive measures gaya ng pagpapakulong. At kulang din ho iyong ating conservation and management measures sa pagpapatupad ho ng mga obligation natin sa regional fisheries management organization. Gusto ho nila na mayroon ho tayong mga vessel monitoring system. . .[108] (Emphasis supplied)

Significantly, the Whereas Clauses of FAO No. 266 specifically identify Section 14 of the Fisheries Code, and several RFMO Resolutions, as legal bases for the VMM and VMS required therein.

With the foregoing considerations, I humbly submit that the VMS required by FAO No. 266 has basis in the Fisheries Code. It is consistent with the mandate of the DA under Sections 4(55) and 14 of the Fisheries Code to continuously observe fishing efforts and to implement an MCS system that encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch. It is also aligned with the international agreements concerning the conservation and management of marine resources that the Philippines entered into and which may be implemented by the government, as stated in Section 118 of the Fisheries Code.

The VMS under FAO No. 266 does not constitute unreasonable search

The ponencia finds merit in the argument that the VMS requirement of FAO No. 266 constitutes unreasonable search.[109] I respectfully disagree.

It should be emphasized Royale Fishing et al. are not per se objecting to the government's collection of data through the ERS under FAO No. 266 because these are already being reported to the BFAR, albeit through "post-fishing operation manual reporting." Instead, their objections pertain to "real-time and continuous VMS recording"[110] and the surveillance of their fishing vessels that would reveal their fishing grounds. From the interpellations, real-time disclosure would allegedly violate their right to their trade secrets because then, their competitors would know the best fishing spots at the moment that Royale Fishing et al. are catching the fish.

To determine whether FAO No. 266 constitutes unreasonable search, the Court must assess whether Royale Fishing et al. have a reasonable expectation of privacy over the location of their fishing vessels and their fish catch data at any given time. To my mind, they do not; thus, FAO No. 266 is not unconstitutional for being violative for Article III, Section 2 of the 1987 Constitution.

Verily, the owner or operator of commercial premises in a "closely regulated industry" has "a reduced expectation of privacy,"[111] because those who engage in such industries accept both the burdens and benefits of their trade; hence, they are necessarily aware of the regulatory measures imposed by the State, including the requirement for their business to be subject to frequent and unannounced administrative inspections.[112]

Among the recognized closely-regulated industries is commercial fishing because it involves the utilization of natural resources belonging to the State.[113] Indeed, Article XII, Section 2 of the 1987 Constitution requires the

utilization of natural resources, such as fisheries, to be under the full control and supervision by the State. Likewise, FAO No. 198-1, s. 2018 specifically states that among the responsibilities of a licensed commercial fishing vessel are compliance with the requirements of fishing logbook inspection on board at all times, on-the-spot examinations, and vessel monitoring, among others.[114]

Thus, warrantless administrative inspections of commercial fishing vessels, which are limited to the right of the State to inspect the licensee's fishing operations on board or on shore, are recognized exceptions to privacy and unreasonable searches.[115] The fact that the licenses issued to owners or operators of commercial fishing vessels give them direct notice that warrantless searches of their business premises could be performed at any time, at nearly any place, as a condition for receiving the license, strongly militates against any justifiable expectation of privacy by such licensees.[116]

Further, a person travelling through public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. Particularly, in *Knotts v. United States*,[117] the United States Supreme Court has upheld the constitutionality of the government's use of a device, which emitted a readable radio signal, in tracking the movements of a person suspected of illegal drugs trade, over public thoroughfares. It held that when a person travels over public streets, he or she voluntarily conveyed to anyone who wanted to look the fact that he/she was travelling over particular roads in a particular direction, the fact of whatever stops he or she made, and the fact of his or her final destination when he or she exited from the public roads. The US Court further noted that the device used by the government merely augmented the senses of the police officers and did not reveal information on the movement of the person while in the privacy of his or her home.

By analogy, Royale Fishing Corporation et al. cannot claim any reasonable expectation of privacy over the location of their fishing vessels and against the VMM required in FAO No. 266, precisely because their business is conducted over public Philippine waters. The VMS under FAO No. 266 is no more intrusive than the Philippine Coast Guard (PCG) or other law enforcement agencies patrolling the Philippine waters, and then closely following and monitoring fishing activities. The VMS and ERS described in Section 4, FAO No. 266 appear to be nothing more than an enhancement of the sensory faculties of law enforcement agents, given that the information obtained by State authorities is no more than what the law enforcement agents would be able to gather had they chosen to follow and closely observe the fishing vessels of Royale Fishing et al.

Still, a valid warrantless inspection of a closely regulated business, such as commercial fishing, is subject to a three-prong test: (1) there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made; (2) the warrantless inspections must be necessary to further the regulatory scheme; and (3) the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant, i.e., the regulation performs the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers.[118]

All these requirements are present insofar as the VMS under FAO No. 266 is concerned.

First, the State has a substantial interest over the exploitation of marine resources under the Regalian Doctrine. The State also has an interest against IUUF. The Fisheries Code was amended precisely to strengthen our measures against IUUF, and several provisions of the Fisheries Code penalize the same.

Second, the VMS is necessary to further the State's interest against IUUF. Commercial fishing vessels are ambulatory. If a prior warrant for an administrative inspection is required, those who engage in IUUF may be warned of the impending inspection and avoid detection by simply moving their vessels elsewhere, especially to the high seas and beyond the Philippine jurisdiction. With a VMS, IUUF is better monitored because the law

enforcers may already determine, based on the coordinates available, if the vessel is engaged in fishing over prohibited areas, and the vessel cannot escape detection by simply moving around the Philippine waters. Further, the Philippine waters are vast and wide, while the sea vessels of law enforcers are limited. Given our limited resources, the law enforcers cannot be expected to monitor the activities of all fishers over each grid of the Philippine waters using only sea vessels. To assist them with monitoring, control, and surveillance, the VMS is necessary.[119]

The necessity of requiring fishing vessels to carry tracking devices similar to the case at bench, without violating the right against unreasonable search, was aptly discussed in *Mexican Gulf Fishing Co. v. United States*:

. . . [W]arrantless searches of vessels at sea were necessary in part because "the nature of the industry prevents procurement of a warrant for a specific vessel in advance," namely, the officers "could not tell when or where they will encounter a vessel fishing" because "[f]ishing vessels are assigned to large areas, they are frequently authorized to move from area to area, and they move in and out of the [Fishery Conservation Zone] without restriction." The Fifth Circuit likewise has noted the fleeting movements of vessels require a different approach than the traditional warrant requirement:

[T]here are characteristics of ships at sea that make it difficult to apply traditional warrant requirements to them. The sea is boundless and vessels may travel in any direction with none to observe them. The exact location of a vessel at any time may be difficult to pinpoint. While it would be easy in a warrant application to describe the vessel, it would be difficult, as the facts here show, to state where and when it will be searched.

Similarly, in *Lovgren*, the Ninth Circuit held warrantless searches of fish caught were necessary because "the government in this case will rarely have time to obtain a warrant before the status quo is changed" because "[t]he fish are highly perishable and even in the best of circumstance are unlikely to remain on the docks for any length of time." As in these analogous cases, in this case the tracking requirement is necessary because there is no other way to confirm the locations of vessels. Fishermen may, whether deliberately or unintentionally, misstate the locations they fished in the electronic reports. Requiring a warrant or precompliance review would negate any benefit the Government might receive. Without the tracking equipment, the data the Government needs, the locations actually fished, would already be lost once the vessel moves, and there would be no accurate way to verify the locations fishermen report.

. . . .

Because the tracking requirement is the only way to provide accurate data on the locations fished, it is necessary to further the Government's interest in protecting the fisheries.[120] (Emphasis supplied)

Finally, Sections 4(55) and 14 of the Fisheries Code are adequate to warn licensees that warrantless administrative inspections may be conducted at any time. To repeat, Section 14 expressly requires the DA to establish an MCS system that shall encompass all Philippine flagged fishing vessels "regardless of fishing area." Meanwhile, Section 4(55) of the law defines monitoring as the requirement of continuously observing fishing efforts and the characteristics of fishery resources, among others.

FAO No. 266 is also an adequate substitute for a warrant in terms of the certainty and regularity of its application because it advises commercial fishers that the search is being made pursuant to Section 14 of the Fisheries Code and has a properly defined scope, and it limits the discretion of the inspecting officers. Verily, FAO No. 266, Section 2(v) limits VMM to the "position, course and speed of the vessels at any given time for the purpose of management of fishing effort and fisheries resources and for traceability." Further, during the interpellations, the Solicitor General explained that VMM under FAO No. 266 will not even provide images of the actual vessel. Instead, the vessels will only appear as shapes or dots on a digitized map. Evidently, the VMM under FAO No.

266 is not impermissibly broad as to monitor non-fishing operations, such as activities in crew quarters or sleeping areas.

It bears stressing that the revelation of the fishing grounds of Royale Fishing et al. through the VMM will be to the government as a regulator, not to their competitors. While Royale Fishing et al. may have an interest in keeping the information secret, the government has precisely assured them that the sensitive commercial data will remain confidential.

In fine, all the requisites for a valid warrantless search have been met by FAO No. 266 because it serves a legitimate government interest for conservation and management of marine resources and against IUUF; the VMM required therein is necessary to further the government interest; and FAO No. 266, in terms of the certainty and regularity of its application, provides a constitutionally adequate substitute for a warrant because it limits VMM to the "position, course and speed of the vessels at any given time for the purpose of management of fishing effort and fisheries resources and for traceability."

FAO No. 266 does not violate the equal protection clause

The ponencia further holds that FAO No. 266 is violative of the equal protection clause because it excludes municipal fishing vessels from its application despite the statement in Section 14 of the Fisheries Code that the MCS system must be made applicable to all Philippine flagged fishing vessels regardless of fishing area and final destination of catch.[121] Respectfully, I disagree.

Under Section 16 of the Fisheries Code, it is the relevant municipality or city government that has jurisdiction over municipal waters and is responsible for the conservation and management of fisheries and aquatic resources within such waters.[122] Corollarily, under Section 65(n) of the law, the BFAR has the power to "enforce all laws, formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters[.]"

Given that the BFAR's jurisdiction does not include municipal waters, FAO No. 266 is made applicable only to commercial or distant water fishing vessel.[123] The DA and BFAR could not have made FAO No. 266 applicable to vessels operating within municipal waters; to do so would be void and ultra vires for being outside the powers of BFAR and for being an act of usurpation of the jurisdiction of the relevant municipal or city government over such waters.

Further, Section 14 of the Fisheries Code must be related to Section 65(r) and (u) of the same law:

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

....

SEC. 65. Functions of the Bureau of Fisheries and Aquatic Resources. — As a line bureau, the BFAR shall have the following functions:

....

(r) formulate and implement rules and regulations for the conservation and management of straddling fish

stocks, highly migratory fish stocks and threatened living marine resources such as sharks, rays and ludong, inter alia, in the Philippine Exclusive Economic Zone, territorial sea, archipelagic and internal waters, in coordination with LGUs and integrated/municipal/city Fisheries and Aquatic Resources Management Councils;

....

(u) adopt an appropriate monitoring, control, surveillance and traceability system for municipal fishing vessels supplying exporters with concurrence of the local government units; (Emphasis supplied)

From the foregoing, the DA must promulgate the appropriate regulation for vessel monitoring but as regards its application over municipal waters, there must be coordination with and concurrence by the local government unit as the agency which has jurisdiction over municipal waters.

Relevantly, in Section 8[124] of the Fisheries Code, as amended, the DA may promulgate harvest control rules and reference points over Philippine waters; however, in municipal waters, the harvest control rules and reference points must be established upon the concurrence and approval of the LGU concerned. This supports the conclusion that in cases where the DA may promulgate rules and regulations over the entire Philippine waters, the application of such rules over municipal waters still requires the concurrence and approval of the concerned LGU that exercises jurisdiction over the municipal waters.

Moreover, during the deliberations for the amendment of the Fisheries Code, the lawmakers were clear that the amendments introduced to the law did not touch upon or amend the jurisdiction of LGUs over municipal waters. The drafters of the amendments to the Fisheries Code emphasized that the municipal waters remain subject to the jurisdiction of the LGUs because only small and subsistence fisherfolks are allowed to fish within the area:

MR. YU [Mr. Hanson Yu]. . . . So ngayon po, yung aming samahan ay iilan na lang po kami na medium scale na nag-o-operate. Mayroong mga okay pa naman po, mayroong medyo naghihingalo na rin, so, kaya po – actually ito pong inaano naming kay director nitong kung may ano, talagang marami pong batas dito sa ating 8550 na medyo napakahirap sa ating mga commercial fishing. Lalo na po ngayon, yung mga bagong batas na pinapataw sa atin ng EU na mga kung anu-anong mga batas, hindi po kaya ng mga municipal, yung mga maliliit na – yung small and medium.

THE CHAIRPERSON (SEN. VILLAR). But we are exempting the municipal waters here. Wala rito na tinouch (touch) about municipal waters.

MR. YU. Opo, hindi po municipal water.

THE CHAIRPERSON (SEN. VILLAR). Ang tinouch (touch) natin lang ay commercial deep sea at saka international. Wala tayong tinouch (touch). We were very particular on that. Wala kaming tinouch (touch) dito sa municipal waters. Kaya kung maliliit, hindi namin tinouch (touch), yun ang rule namin. And these fishermen operating in international and deep sea, we have to regulate them because they will not be allowed to go if hindi sila mare-regulate. Kasi iyon ang gusto ng international because you are going on international waters. Sa ating municipal water, wala po kaming provision dito. No provision here touching the municipal because if we touch the municipal water, then you interfere with the Local Government Code and ayaw natin noon. We are just very concerned about the international and deep sea fishing, hidi ba?[125]

....

THE CHAIRPERSON (SEN. VILLAR). Ano ba iyong municipal? Hindi nga natin tinouch (touch) iyong municipal. Kasi doon sa municipal, nandoon iyong mahihirap. We will let LGU take care of that. Kasi alam mo, pag tinouch (touch), mo iyong municipal, it's under LGU, mahihirapan tayo dito. Aayawan tayo ng LGU dito. Nagiging very complicated ang bill pag tina-touch natin iyong municipal. Kaya hindi na naming po

tinouch (touch) iyong municipal.[126]

....

THE CHAIRPERSON (SEN. VILLAR). Itong law na ito, wala ito sa municipal waters, let's be clear on that. Hindi namin tinouch (touch) iyong municipal waters kasi LGU iyon. This is beyond the municipal waters, hindi ba?

MR. MADRINIAN [Mr. Vicente Madrinian]. Hindi po ma'am, puwede kaya natin kunsultahin iyong mga mangingisda, halimbawa, iyong mga fisherfolks natin?

THE CHAIRPERSON (SEN. VILLAR). LGU iyon, sa LGU na iyon. Ngayon, bibigyan kayo ng ayuda ng BFAR pero sino bang mga mangingisda iyon? Hindi ko nga sila nakikita.[127]

....

THE CHAIRPERSON (SEN. VILLAR). Hindi kayo pinakialaman kasi LGU kayo. Supposed to be ang magma-manage sa inyo, LGU.[128] (Emphasis supplied)

Even assuming that the BFAR must establish rules on VMM for all Philippine flagged vessels, including those within municipal waters, the BFAR could implement VMM on staggered basis, depending on the gross tons (GT) of their vessel, as provided in Rule 119.2 of the IRR of the Fisheries Code, as amended, in relation to Section 4(10) of the Fisheries Code:

RULE 119.2. Implementation of the VMM. — Based on the following schedule, the VMM requirement shall be implemented for catcher commercial fishing vessels of 30 GT and above operating in Philippine waters:

Vessel tonnage

Schedule of Implementation
from Effectivity of IRR

Above 200 GT

Within Six (6) months

150 to 200 GT

Within one (1) year

100 to 149 GT

Within two (2) years

50 to 99 GT

Within three (3) years

30 to 49 GT

Within four (4) years

Provided, that within one (1) year from the effectivity of this IRR, the DA-BFAR shall determine the appropriate VMM technology and the corresponding schedule to cover the vessels not included in the above schedule, upon consultation with stakeholders, following the process stated in Rule 65.2.

....

SECTION 4. Definition of Terms. — As used in this Code, the following terms and phrases shall mean as follows:

10.

Commercial Fishing — the taking of fishery species by passive or active gear for trade, business or profit beyond subsistence or sports fishing, to be further classified as:

1.

Small scale commercial fishing — fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to twenty (20) GT;

2.

Medium scale commercial fishing — fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT; and

3.

Large scale commercial fishing — fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.

The fact that FAO No. 266 does not include municipal fishers and is applicable only to commercial fishers, in my view, does not warrant a finding of violation of the equal protection clause. Pursuant to the IRR of the Fisheries Code, the BFAR may require VMM on staggered basis, depending on the gross tons of the fishing vessel involved.

Here, there are indisputable differences between the gross tonnage of commercial fishing vessels and municipal fishing vessels, as pointed out during the oral arguments. While a municipal fishing vessel only has 3 gross tons or less,[129] commercial fishing vessels could range from 3.1 to more than 150 gross tons.[130] The differences in the gross tonnage and catch capacity of commercial and municipal fishing, to my mind, allow the BFAR to prioritize the implementation of VMM to commercial fishers over municipal fishers.

In any case, the Department of Interior and Local Government (DILG) issued DILG Circular No. 2018-059 dated April 23, 2018, which enforces VMM within municipal waters, and requires the use of VMS by vessels over municipal waters. It relevantly states:

6.4.4. All LGUs are to ensure that no municipal fishing vessel shall engage in fishing activity without complying with the vessel monitoring measures promulgated by DA-BFAR, through the implementation of the Vessel Monitoring System as a Monitoring, Control, and Surveillance Tool;

....

6.5.

REGULATION OF PROHIBITED FISHERY ACTIVITIES

6.5.1.

All cities and municipalities shall ensure that no person shall engage in the following acts:

....

w) Non-compliance with vessel monitoring measures; and

....

Thus, there are already regulations in place which require LGUs to comply with the VMM established by BFAR. Given the foregoing, it is my position that FAO No. 266 does not violate the equal protection clause.

The BFAR substantially complied with Rule 65.2 of the IRR of the Fisheries Code when it promulgated FAO No. 266

Rule 65.2 of the Fisheries Code IRR provides a procedure for BFAR in passing rules and regulations:

RULE 65.2. Formulation of Rules and Regulations. — In formulating rules and regulations, the DA-BFAR shall observe these principles:

- The regulation shall be based on scientific studies. In the conduct of scientific studies, stakeholders in the affected region shall be informed of the conduct study, its duration and the expert/s who will conduct the same. The stakeholders may nominate their own scientist/s to participate in the study or will be given the chance to provide comments on the scientist who will conduct the study;
- The consultation shall be conducted in all affected regions as may be practicable, taking into consideration the safety and accessibility of the venue to the stakeholders;
- Stakeholders shall be given at least fifteen (15) days prior notice of the date and venue of the consultation including the subject matter of the proposed regulation. The notice shall be published in a newspaper of general circulation in the region, where feasible; and,
- The proposed regulation shall be made publicly available at the BFAR website and BFAR Regional Offices at least seven (7) days prior to the consultation.

Significantly, Rules 119.1 to 119.2, of the IRR of the Fisheries Code, as amended, require BFAR to comply with the procedure laid down in Rule 65.2 in the application of VMM for catcher vessels operating in Philippine waters. Rule 38.1 of the same IRR requires compliance with the same procedure in crafting a catch documentation system:

RULE 38.1. Catch Documentation System (CDS).— A Catch Documentation System (CDS) shall be developed following the process stated in Rule 65.2. Non-compliance with the system shall be included as one of the grounds for suspension or revocation of CFVL and CGL of the catcher vessel. The CDS shall be included in the rules and regulations on commercial fishing; provided, however, that subsistence fishers are exempted from the CDS.

....

RULE 119.1. Scope of Vessel Monitoring Measures (VMM).— The VMM shall apply to licensed Philippine flagged fishing vessels operating within and outside Philippine waters as follows:

(a)

All licensed Philippine flagged commercial catcher and carrier vessels operating outside Philippine waters shall be installed with a two-way ALC.

(b)

For catcher vessels operating in Philippine waters, the application of VMM shall be determined in consultation with the stakeholders, following the process stated in Rule 65.2.

RULE 119.2. Implementation of the VMM. — Based on the following schedule, the VMM requirement shall be implemented for catcher commercial fishing vessels of 30 GT and above operating in Philippine waters:

Vessel tonnage

Schedule of
Implementation
from Effectivity of
IRR

Above 200 GT

Within Six (6) months

150 to 200 GT

Within one (1) year

100 to 149 GT

Within two (2) years

50 to 99 GT

Within three (3) years

30 to 49GT

Within four (4) years

Provided, that within one (1) year from the effectivity of this IRR, the DA-BFAR shall determine the appropriate VMM technology and the corresponding schedule to cover the vessels not included in the above schedule, upon consultation with stakeholders, following the process stated in Rule 65.2.

In connection with the above, it is an elementary principle that the rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce have the force of law.[131] Because the rules, regulations and general orders enacted by administrative authorities pursuant to the powers delegated to them have the force and effect of law, compliance therewith is mandatory.[132] The fact that Section 21[133] of Republic Act No. 10654 bestows upon the DA the power to promulgate the IRR of the law does not grant it the unbridled discretion to disregard the IRR that it already promulgated and violate the right to due process of the stakeholders concerned.[134]

Further, in *National Association of Electricity Consumers for Reform v. Energy Regulatory Commission*,[135] the Court ruled that the provisions of an IRR concerning the procedure to be observed by a government agency in promulgating rules or guidelines on rate adjustments address the right of the public to due process, so that all persons having an interest in the proceedings may be notified thereof. Thus, in passing the pertinent rules on guidelines on rate adjustments, the government agency concerned must comply with procedure provided by the IRR.

Hence, similar to *National Association of Electricity Consumers for Reform*, the DA and BFAR should have

complied with the procedure laid down in the IRR of the Fisheries Code in issuing FAO No. 266 and imposing VMM and VMS upon Royale Fishing et al. Surely, the DA and BFAR did not have any discretion to disregard these provisions of the IRR, especially considering that stakeholders, such as Royale Fishing et al., would have relied on the procedure laid down therein for the determination of the VMM and VMS that may be required of them.[136] Any action by the BFAR and DA that contravenes the foregoing provisions of the Fisheries Code IRR is null and void for being violative of the right to due process of the stakeholders affected thereby, including Royale Fishing et al.[137]

Still, I find that BFAR had substantially complied with Rule 65.2 when it issued FAO No. 266. The records show that BFAR sent notices of consultation among the stakeholders and circulated a draft of FAO No. 266 before it was eventually promulgated.

First, Atty. Benjamin F.S. Tabios, Jr. (Atty. Tabios) of the BFAR testified that the scientific basis for FAO No. 266 is the UN Food and Agriculture Organization No. 815 or the report of the Expert Consultation on the Use of Monitoring Systems and Satellites for Fisheries Monitoring, Control and Surveillance (UN Report), among others.[138] Studies were also conducted by the BFAR through several Filipino scientists.[139]

Atty. Tabios stated that the UN Report was not presented to the stakeholders during the consultation meetings.[140] When asked why the study was not presented, he explained that the Report was no longer presented because FAO No. 266 is only a continuation of FAO No. 241 and FAO No. 260. The earlier regulations had already installed a vessel monitoring system as early as 2012:

Q: Why did you not mention this FAO Report during the Public Consultation?

A:

What we mentioned during the consultation is that this is an upgrade only of exactly FAO [No.] 241 and FAO [No.] 260 which are only application of vessel monitoring systems in the Philippines and based on experience on these FAOs we are basing our decision to put in place VMS on other vessels not covered by FAO [No.] 241 and FAO [No.] 260.

....

There is sufficient evidence based on practice that has been conducted by the bureau on the implementation of VMS since 2012 until the present up to the time of consultation that was our basis, Madam.[141]

It should be emphasized that Rule 65.2 of the IRR of the Fisheries Code, as amended, does not absolutely require the conduct of new studies in the formulation of regulations for the law's enforcement. However, if new studies shall be conducted, then the stakeholders may nominate their own scientists or will be given the chance to provide comments on the scientist who will conduct the study.

Second, the stakeholders were given the opportunity to submit their comments on the draft of FAO No. 266. This was testified on by Rollan C. Geronimo, an IUUF specialist, who submitted written comments on the draft of FAO No. 266.[142]

Third, consultations with fishers and fishing vessel operators were also held. Peter Paul D. Santos, an officer of herein respondent Bonanza Fishing and Market Resources, Inc., testified:

Q:

Was there an instance wherein the BFAR . . . well . . . how did you come to know about this FAO [No. 266]. . .

when did you learn about this FAO 266 that you said had been issued without consultation, when did you learn about this FAO [No. 266]?

A:

When it was e-mailed to me, [Ma'am].

Q:

E-mailed by who, Mr. Witness?

A:

Somebody from BFAR, [Ma'am].

Q:

Somebody from BFAR . . . and the e-mail was about . . . what was the e-mail . . . can you explain your answer, what was the e-mail all about, what was the contents of the e-mail of the BFAR?

A:

The FAO [No.] 226 (sic), sometimes they also e-mail to me the draft, [Ma'am].

Q:

Sometimes, they e-mailed to you the draft, what have they requested from the e-mail, did they make any request with respect to this FAO [No.]266 that they e-mailed to you?

A:

Sometimes, there is a notice or meeting or the Notice of Consultation, [Ma'am].

Q:

In the said meeting and Notice of Consultation, do you recall what dates were these . . . what dates were those, Mr. Witness?

A:

I am sorry [Ma'am], I cannot recall.

Q:

Have you attended any of these meetings or consultations based on the invites . . . e-mail invites sent to you by the [B]FAR?

A:

Yes, [Ma'am].

Q:

Who were you with when . . . during those meetings or consultation that you mentioned . . . are there any?

A:

For my company, [Ma'am].

Q:

Is your company alone in that . . . I mean . . . who is with you . . . not just your company, Mr. Witness?

A:

BFAR personnel, some other fishing companies, [Ma'am].

.....

Q:

How many would . . . would you tell us how many meetings and consultations that you have attended in relation to what you have mentioned a while ago . . . how many?

A:

I've attended, I am not sure, how many I have attended with the more than twice, [Ma'am]?[143]

Atty. Tabios also identified the minutes of the consultation meetings that were held in clusters, particularly, the North Luzon, South Luzon, Mindanao, and Visayas regional clusters.[144]

Finally, the draft of FAO No. 266 was referred to the National Fisheries and Aquatic Resources Management Council (NFARMC).[145] Notably, under Section 70[146] of the Fisheries Code, the members of the NFARMC include representatives of the commercial fishing and aquaculture operators and processing sectors.

I stress that the requirement of a scientific study, with consultation and the opportunity to the stakeholders to

provide their comments thereon under Rule 65.2 of the Fisheries Code IRR, ensures that the law is not implemented haphazardly on the basis of speculation or surmise.[147] It also avoids needless economic dislocation of fishers due to the government's zealous but unintelligent pursuit of its environmental objectives.[148] To my mind, these objectives are met by the fact that FAO No. 266 has basis in a scientific study. Further, public consultations were held before FAO No. 266 was promulgated, and the stakeholders were given the full opportunity to contest the same through the submission of comments. There is therefore sufficient compliance with Rule 65.2.

Accordingly, I vote as follows:

(1)

In G.R. No. 256282, the Petition for Certiorari is DISMISSED for having been rendered MOOT and ACADEMIC;

(2)

In G.R. No. 256559, the Petition for Review on Certiorari is GRANTED. The Decision dated June 1, 2021 of Branch 170, Regional Trial Court, Malabon City in SCA Case No. SCA20-002-MAL is REVERSED and SET ASIDE. Fisheries Administrative Order No. 266, Series of 2020 is declared NOT UNCONSTITUTIONAL; and

(3)

In G.R. No. 257049, the Petition for Review on Certiorari is PARTLY GRANTED. Petitioners Oceana Philippines International, Pablo R. Rosales, and Ronaldo P. Reyes are allowed to intervene in G.R. No. 256559.

[1] Ponencia, pp. 24-25.

[2] See *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 758 Phil. 724, 754-755 (2015) [Per J. Leonardo-De Castro, En Banc].

[3] Petition for Declaratory Relief, p. 19.

[4] Ponencia, p. 37.

[5] *Id.* at 37-41.

[6] *Foster-Gallego v. Spouses Galang*, 479 Phil. 148 (2004) [Per J. Carpio, First Division]. See also *Union Bank of the Philippines v. Concepcion*, 552 Phil. 730 (2007) [Per J. Garcia, First Division].

[7] *Foster-Gallego v. Spouses Galang*, 479 Phil. 148, 161-162 (2004) [Per J. Carpio, First Division].

[8] *Union Bank of the Philippines v. Concepcion*, 552 Phil. 730 (2007) [Per J. Garcia, First Division].

[9] *Pillars Property Corp. v. Century Communities Corp.*, 848 Phil. 187, 195 (2019) [Per J. Caguioa, Second Division].

[10] Section 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a

distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

[11] See *Fort Bonifacio Development Corp. v. Yllas Lending Corp.*, 588 Phil. 748, 761-763 (2008) [Per J. Carpio, First Division], citing *Bayer Phils., Inc. v. Agana*, 159 Phil. 953, 966 (1975) [Per J. Antonio, Second Division]. See also *Dare Adventure Farm Corp. v. Court of Appeals*, 695 Phil. 681, 691 (2012) [Per J. Bersamin, First Division].

[12] *Brito, Sr. v. Dianala*, 653 Phil. 200,212 (2010) [Per J. Peralta, Second Division].

[13] Section 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (Emphasis supplied)

[14] Section 2, Rule 22 of the Rules of Procedure for Environmental Cases, states that the "Rules of Court shall apply in a suppletory manner, except as otherwise provided herein."

[15] *Ongco v. Dalisay*, 691 Phil. 462, 470 (2012) [Per J. Sereno, Second Division]; *Magsaysay-Labrador v. Court of Appeals*, 259 Phil. 748, 753 (1989) [Per C.J. Fernan, Third Division].

[16] *Cariño v. Ofilada*, 291 Phil. 203, 215 (1993) [Per J. Davide, Jr., En Banc].

[17] *First Philippine Holdings Corp. v. Sandiganbayan*, 323 Phil. 36, 52 (1996) [Per J. Panganiban, En Banc]. See also *Superlines Transportation Co., Inc. v. Victor*, 209 Phil. 764, 768-769 (1983) [Per J. Escolin, En Banc].

[18] *Acenas II v. Court of Appeals*, 317 Phil. 889, 895-896 (1995) [Per J. Romero, Third Division].

[19] Petition (G.R. No. 257049), p. 18.

[20] Petition (G.R. No. 256282), p. 16.

[21] Petition (G.R. No. 256282), pp. 15-16.

[22] *Auman v. Estenzo*, 161 Phil. 681, 696-697 (1976) [Per J. Muñoz Palma, First Division].

[23] *Bayron v. Commission on Audit*, 931 Phil. 1048, 1057 (2022) [Per J. Gaerlan, En Banc].

[24] SEC. 134. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, and Preliminary Mandatory Injunctions. – No injunction or restraining order from the Municipal Trial Courts and Regional Trial Courts shall lie against the Department and BFAR upon the ex parte motion or petition filed by any person or entity in the exercise by the Department and BFAR of its regulatory functions in support of the implementation of this Code.

[25] Ponencia, pp. 28-34.

[26] *Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortes*, 627 Phil. 543, 549-550 (2010) [Per J. Carpio, Second Division]; *Carpio-Morales v. Court of Appeals*, 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].

[27] *Carpio-Morales v. Court of Appeals*, 772 Phil. 672, 742 (2015) [Per J. Perlas-Bernabe, En Banc].

[28] *Id.* at 744.

[29] FISHERIES CODE, Section 132.

[30] FISHERIES CODE, Section 133.

[31] FISHERIES CODE, Section 135.

[32] Minutes of the deliberations of the Committee on Agriculture and Food on the Amendments to the Philippine Fisheries Code of 1998 dated July 10, 2014, pp. 33-34.

[33] FISHERIES CODE, Sections 106.

[34] FISHERIES CODE, Section 101.

[35] FISHERIES CODE, Section 110.

[36] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[37] *Id.* at 235-236.

[38] *Social Justice Society Officers v. Lim*, 748 Phil. 25 (2014) [Per J. Perez, En Banc].

[39] *Id.* at 84-87.

[40] Section 4. Who may file. — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

[41] See *Republic v. Heirs of Tupaz IV*, 881 Phil. 625, 659 [Per J. Leonen, Third Division]; *Philip Morris, Inc. v. Fortune Tobacco Corp.*, 526 Phil. 300, 312, 314 (2006) [Per J. Garcia, Second Division]; *Mighty Corp. v. E. & J. Gallo Winery*, 478 Phil. 615, 641 (2004) [Per J. Corona, Third Division]; *Microsoft Corp. v. Best Deal Computer Center Corp.*, 438 Phil. 408 (2002) [Per J. Bellosillo, Second Division].

[42] *Air Philippines Corp. v. Pennswell, Inc.*, 564 Phil. 774, 782 (2007) [Per J. Chico-Nazario, Third Division].

[43] SEC. 127. Unauthorized Disclosure of Sensitive Technical Information. - Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information. Any unauthorized disclosure of said data including all other data referred to in Section 155 in this Code, by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

[44] SECTION 23. Confidentiality and Authorized Disclosure of Sensitive Technical Information. - VMS data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information, except in the following instances of authorized disclosure, provided the affected party is informed of such disclosure:

- a. When officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense;
- b. When requested by the flag coastal or port state for its own investigation or traceability; or
- c. Other analogous circumstances.

Any unauthorized disclosure of VMS data by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where

applicable.

The DA-BFAR shall take such measures as may be necessary to protect sensitive technical information, when disclosure of such information will injure the competitiveness or viability of domestic fisheries.

[45] Section 2(u) of FAO No. 266 states that "all data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information."

[46] SECTION 23. Confidentiality and Authorized Disclosure of Sensitive Technical Information. — VMS data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information, except in the following instances of authorized disclosure, provided the affected party is informed of such disclosure:

- a. When officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense;
- b. When requested by the flag coastal or port state for its own investigation or traceability; or
- c. Other analogous circumstances.

Any unauthorized disclosure of VMS data by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

[47] *United States v. Smith*, 469 F. Supp. 3d 1249, 1257-59 (N.D. Fla. 2020).

[48] Ponencia, pp. 44-45.

[49] *Ex parte Miltope Corp.*, 823 So. 2d 640 (Ala. 2001), cited in *Air Philippines Corp. v. Pennswell*, 564 Phil. 774 (2007) [Per J. Chico-Nazario, Third Division].

[50] *FMC Corporation v. Taiwan Tainan Giant Industrial Co., Ltd.*, 730 F.2d 61, 63 (2d Cir. 1984).

[51] *Borlongan, Jr. v. Peña*, 563 Phil. 530, 541 (2007) [Per J. Nachura, Third Division]; *Go-Yu v. Yu*, 851 Phil. 213, 222-223 (2019) [Per J. Peralta, Third Division].

[52] Ponencia, pp. 44-45.

[53] *Air Philippines Corp. v. Pennswell, Inc.*, 564 Phil. 774, 785 (2007) [Per J. Chico-Nazario, Third Division].

[54] *Gamboa v. Chan*, 691 Phil. 602, 612 (2012) [Per J. Sereno, En Banc].

[55] *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*, 781 Phil. 610, 636-637 (2016) [Per J. B.L. Reyes, Third Division].

[56] *Id.*

[57] *Javellana v. Executive Secretary*, 151-A Phil. 35, 129-130 (1973) [Per C.J. Concepcion, En Banc].

[58] *Whalen v. Roe*, 429 U.S. 589, 598-600, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977).

[59] *State v. Greene*, No. 55862-5-1, 2007 Wash. App. LEXIS 364, at *6-8 (Ct. App. Mar. 5, 2007; *Apodaca v. Monies*, 606 S.W.2d 734, 736 (Tex. Civ. App. 1980); *Paul v. Davis*, 424 U.S. 693, 712-13, 96 S. Ct. 1155, 1166 (1976).

[60] *Ramirez v. State*, 557 S.W.3d 717, 721-22 (Tex. App. 2018); *S. Fla. Blood Serv. v. Rasmussen*, 467 So. 2d 798, 802 (Fla. Dist. Ct. App. 1985).

[61] *Falcon Ridge Dev. v. City of Rio Rancho*, No. CIV 99-1365 MV/LFG, 2001 U.S. Dist. LEXIS 28332 (D.N.M. Mar. 20, 2001).

[62] *Ex parte Abell*, 613 S.W.2d 255, 266-67 (Tex. 1981).

[63] *Ramirez v. State*, 557 S.W.3d 717, 721-22 (Tex. App. 2018); *S. Fla. Blood Serv. v. Rasmussen*, 467 So. 2d 798, 802 (Fla. Dist. Ct. App. 1985).

[64] *Ramirez v. State*, 557 S.W.3d 717, 721-22 (Tex. App. 2018); *Ex parte Abell*, 613 S.W.2d 255, 266-67 (Tex. 1981).

[65] *Id.*

[66] *Fernando v. St. Scholastica's College*, 706 Phil. 138, 157 (2013) [Per J. Mendoza, En Banc].

[67] *Zomer Development Co., Inc. v. Special Twentieth Division of the Court of Appeals, Cebu City*, 868 Phil. 93, 116 (2020) [Per J. Leonen, En Banc].

[68] *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*, 793 Phil. 17, 67 (2016) [Per J. Bersamin, En Banc].

[69] See *Department of Transportation v. Philippine Petroleum Sea Transport Association*, 837 Phil. 144, 171 (2018) [Per J. Velasco, Jr., En Banc]; *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*, 793 Phil. 17, 68-69 (2016) [Per J. Bersamin, En Banc].

[70] *Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*, 268 Phil. 739, 750 (1990) [Per J. Cortes, Third Division]; *Southeast Mindanao Gold Mining Corp. v. Balite Portal Mining Cooperative*, 429 Phil. 668, 682 (2002) [Per J. Ynares-Santiago, First Division].

[71] *Tallman v. Department of Natural Resources*, 321 Mich. 585 (Mich. 1984) [Levin, J., Separate Concurring Opinion].

[72] *Id.*

[73] *Fernando v. St. Scholastica's College*, 706 Phil. 138, 158 (2013) [Per J. Mendoza, En Banc].

[74] *Tallman v. Department of Natural Resources*, 321 Mich. 585 (Mich. 1984) [Levin, J., Separate Concurring Opinion].

[75] FISHERIES CODE, as amended, Section 101.

[76] FISHERIES CODE, as amended, Section 100.

[77] FISHERIES CODE, as amended, Section 44.

[78] FISHERIES CODE, as amended, Section 86.

[79] See FISHERIES CODE, as amended, Section 4(35), which states:

SEC. 4. Definition of Terms. — As used in this Code, the following terms and phrases shall mean as follows:

....

(35) Fisheries Observer — refers to a person duly authorized by the Philippine government or under a Regional Observer Program of the RFMO, to collect scientific, technical or fishing-related data, and other information that may be required by the government or the RFMO and/or in compliance to a conservation and management measure.

[80] See Section 24 of Fisheries Administrative Order No. 198-1, s.2018, September 4, 2018, or the Amended Rules and Regulations on Registration and Licensing of Commercial Fishing Vessels, Fishing Gears and Fishworkers. Section 24 thereof states:

SECTION 24. Responsibilities of the License Holder. — The license holder has the following responsibilities:

a. recording of fish catch and spoilage, landing points, estimated quantity and indicative/estimated value of fish caught, and off-loaded for transshipment, sale and/or other disposal and other information in the prescribed fishing logsheet for entire duration of the fishing license;

.....

d. keeping of fishing logsheets on board and be made readily available for inspection by authorized fishery law enforcers at all times, except when the boat is dry docked or undergoing repairs;

.....

i. allow deputized fishery law enforcement officers to take fish samples for on-the-spot examinations;

j. submit original fishing logsheet;

k. comply with the vessel monitoring measure, as applicable;

l. comply with the observer requirement, as applicable; and

... (Emphasis supplied)

[81] *Balelo v. Balridge*, 724 F.2d 753 (9th Cir. 1984) relevantly states:

It appears to us that the regulation at issue here is consistent with the objective and directives of the MMPA. Requiring the Captains to consent to the placement of observers on their vessels as a condition a/obtaining a fishing permit is reasonably related to the purposes of the enabling legislation. The paramount purpose of the Act is "the protection and conservation of marine mammals:" 16 U.S.C. § 1371. As the D.C. Circuit has observed, the MMPA is to be administered "for the benefit of protected species, rather than for the benefit of commercial exploitation." *Committee for Humane Legislation*, 540 F.2d at 1148.

....

The affidavit offered by the government on its motion for summary judgment discloses that the use of on-board observers is the only practicable method of enforcing the limitations in MMPA permits. The tuna vessels subject to the Secretary's regulation operate over thousands of square miles of open ocean for months at a time. No independent surveillance program could hope to be able to verify whether or not a particular vessel complied with its trip quota. Even if such a technically feasible surveillance program were available, its costs would be prohibitive. The observer program is thus "necessary and appropriate to insure that such taking will not be to the disadvantage of those species . . . and will be consistent with the purposes and policies set forth in the [MMPA]." Because the observer program is necessary for the enforcement of the MMPA, it is within the authority granted to the Secretary by Congress.⁸¹ (Emphasis supplied)

[82] *Ponencia*, p. 59.

[83] *Id.* at 64.

[84] *Id.* at 59.

[85] *Mexican Gulf Fishing Co. v. United States*, 587 F. Supp. 3d 428, 478-88 (E.D. La. 2022).

[86] *Ponencia*, pp. 60-61.

[87] *FAO No. 266*, Section 20.

[88] See *Trillanes IV v. Medialdea*, 952 Phil. 258 (2024) [Per J. Singh, En Banc] and *Marcos v. Manglapus*, 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

[89] See *Factoran v. Court of Appeals*, 378 Phil. 282, 293 (2001) [Per J. De Leon, Jr., Second Division], citing

Paat v. Court of Appeals, 334 Phil. 146, 155 (1997) [Per J. Torres, Jr., Second Division], further citing MWSS v. Vasquez, 310 Phil. 549, 580 [Per J. Vitug, En Banc].

[90] Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984).

[91] Philip Morris, Inc. v. Harshbarger, 159 F.3d 670 (1998).

[92] Food Marketing institute v. Argus Leader Media, 139 S.Ct. 2356 (2019).

[93] Id.

[94] Id. The government's undertaking to keep the sensitive or proprietary commercial information secret or private has been characterized as a "'workable balance' between disclosure and other governmental interests—interests that may include providing private parties with sufficient assurances about the treatment of their proprietary information so they will cooperate in federal programs and supply the government with information vital to its work."

[95] See Public Citizen Health Research Grp. v. F.D.A, 704 F.2d 1280, 1291 n.30 (D.C. Cir. 1983).

[96] Philip Morris, Inc. v. Harshbarger, 159 F.3d 670 (1998); Philip Morris, Inc. v. Reilly, 312 F.3d 24 (2002).

[97] SEC. 127. Unauthorized Disclosure of Sensitive Technical Information. — Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information. Any unauthorized disclosure of said data including all other data referred to in Section 155 in this Code, by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

[98] SECTION 23. Confidentiality and Authorized Disclosure of Sensitive Technical Information. — VMS data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information, except in the following instances of authorized disclosure, provided the affected party is informed of such disclosure:

- a. When officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense;
- b. When requested by the flag coastal or port state for its own investigation or traceability; or
- c. Other analogous circumstances.

Any unauthorized disclosure of VMS data by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable.

The DA-BFAR shall take such measures as may be necessary to protect sensitive technical information, when disclosure of such information will injure the competitiveness or viability of domestic fisheries.

[99] Ponencia, pp. 64-67.

[100] Minutes of the Committee on Agriculture and Food Joint with the Committees on Environment and Natural Resources; and Finance on the Amendments to the Philippine Fisheries Code of 1998 dated September 10, 2014, pp. 15-16.

[101] Id. at 85.

[102] Minutes of the Committee on Agriculture and Food Joint with the Committees on Environment and Natural Resources; and Committee on Finance (Technical Working Group) on the Amendments to the Philippine

Fisheries Code of 1998 dated April 30, 2014, pp. 171-173.

[103] Section 21 of R.A. No. 10654 states that the "Department of Agriculture, in consultation with concerned government agencies and stakeholders, shall promulgate the implementing rules and regulations of this Act, within six (6) months from the effectivity of this Act."

[104] *Land Bank of the Phils. v. Colarina*, 644 Phil. 76, 91 (2010) [Per J. Nachura, Second Division]; *Land Bank of the Phils. v. Rufino*, 617 Phil. 608, 6196-620 (2009) [Per J. Carpio Morales, Second Division]; *Carolina Industries, Inc. v. CMS Stock Brokerage, Inc.*, 186 Phil. 492, 516 (1980) [Per J. Antonio, Second Division]. See also *Associated Trade Unions v. Trajano*, 245 Phil. 293, 297-298 (1988) [Per J. Cruz, First Division].

[105] Minutes of the Committee on Agriculture and Food Joint with the Committees on Environment and Natural Resources; and Finance on the Amendments to the Philippine Fisheries Code of 1998 dated September 10, 2014, pp. 58-60.

[106] FISHERIES CODE, as amended, section 4(13) defines "Conservation and Management Measures" as "measures to conserve and manage living marine resources that are adopted and applied consistently with the relevant rules of international law including those reflected in conventions, RFMO resolutions and laws of other coastal states where Philippine flagged vessels fish."

[107] FISHERIES CODE, as amended, section 118 states:

SEC. 118. Failure to Comply with Rules and Regulations on Conservation and Management Measures. — It shall be unlawful for any person to fail to comply with conservation and management measures adopted in rules and regulations to be promulgated by the Department pursuant to international conventions, RFMO resolutions and laws of coastal states where Philippine vessels fish.

Upon a summary finding of administrative liability, violation of the rules and regulations promulgated by the Department shall be punished with confiscation of catch and suspension or cancellation of license or permit and an administrative fine of twice the value of the catch or the amount indicated below whichever is higher:

- (1) Twenty thousand pesos ([PHP]20,000.00) for municipal fishing or community service in case of failure to pay the fine;
- (2) One million pesos ([PHP]1,000,000.00) for small-scale commercial fishing;
- (3) Two million five hundred thousand pesos ([PHP]2,500,000.00), for medium-scale commercial fishing; and
- (4) Five million pesos ([PHP]5,000,000.00), for large-scale commercial fishing.

Upon conviction by a court of law, the offender shall be punished with imprisonment of six (6) months and fine twice the amount of the administrative fine, and confiscation of the catch and suspension or cancellation of license.

[108] Minutes of the Committee on Agriculture and Food Joint with the Committee on Environment and Natural Resources; and Finance on Proposed Amendments to the Philippine Fisheries Code of 1998 dated April 4, 2014, pp. 28-29.

[109] Ponencia, p. 64.

[110] Comment (G.R. Nos. 256282, 256559, & 257049), pp. 14-16.

[111] *Bensori v. State of Rhode Island*, C.A. PC-2020-06786, May 19, 2022.

[112] *Id.*

[113] *Tallman v. Department of Natural Resources*, 321 Mich. 585 (Mich. 1984).

[114] FAO No. 198-1, series of 2018, section 24 relevantly states:

SECTION 24. Responsibilities of the License Holder. — The license holder has the following responsibilities:

....

d. keeping of fishing logsheets on board and be made readily available for inspection by authorized fishery law enforcers at all times, except when the boat is dry docked or undergoing repairs;

....

i. allow deputized fishery law enforcement officers to take fish samples for on-the-spot examinations;

j. submit original fishing logsheet;

k. comply with the vessel monitoring measure, as applicable;

l. comply with the observer requirement, as applicable; and

m. comply with the harvest control rules and reference points.

[115] Tallman v. Department of Natural Resources, 321 Mich. 585 (Mich. 1984).

[116] Id.

[117] U.S. v. Knotts, 460 U.S. 276 (1983).

[118] New York v. Burger, 482 U.S. 691, 702-3 (1987); Mexican Gulf Fishing Co. v. United States, 587 F. Supp. 3d 428, 478-88 (E.D. La. 2022).

[119] Benson v. State, C. A. PC-2020-06786. 27-28, R.I. Super. May 19, 2022.

[120] Mexican Gulf Fishing Co. v. United States, 587 F. Supp. 3d 428, 478-88 (E.D. La. 2022).

[121] Ponencia, p. 69.

[122] FISHERIES CODE, section 16, states:

SECTION 16. Jurisdiction of Municipal/City Government. — The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

The management of contiguous fishery resources such as bays which straddle several municipalities, cities or provinces, shall be done in an integrated manner, and shall not be based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management. The Integrated Fisheries and Aquatic Resources Management Councils (FARMCs) established under Section 76 of this Code shall serve as the venues for close collaboration among LGUs in the management of contiguous resources.

[123] See Section 24 of FAO No. 266, which states:

Section 24. Non-compliance with Vessel Monitoring Measures –

No commercial or distant water fishing vessel shall engage in fishing activity without complying with the

vessel monitoring measures and electronic reporting system set herein. It shall also be unlawful to intentionally tamper with, switch off or disable the vessel monitoring system.

Any violation of this section shall be dealt with in accordance with Section 119 of the Fisheries Code, as amended by [R.A. No.] 10654.

[124] SEC. 8. Harvest Control Rules and Reference Points. - The Secretary may establish reference points and harvest control rules in a fishery management area or for a fishery: Provided, however, That in municipal waters and fishery management areas, and waters under the jurisdiction of special agencies, Harvest Control Rules and Reference Points may be established upon the concurrence and approval or recommendation of such special agency and the concerned LGU in consultation with the FARMC for conservation or ecological purposes. (Emphasis supplied)

[125] Minutes of the Committee on Agriculture and Food Joint with the Committees on Environment and Natural Resources; and Finance on the Amendments to the Philippine Fisheries Code of 1998 dated September 10, 2014, pp. 50-51.

[126] Id. at 70.

[127] Id. at 98-99.

[128] Id. at 100.

[129] FISHERIES CODE, section 4(57) defines "municipal fishing" as "fishing within municipal waters using fishing vessels of three (3) gross tons or less, or fishing not requiring the use of fishing vessels."

[130] Section 4(10) of the Fisheries Code defines commercial fishing as follows:

10. Commercial Fishing — the taking of fishery species by passive or active gear for trade, business & profit beyond subsistence or sports fishing, to be further classified as:

- Small scale commercial fishing — fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to twenty (20) GT;

- Medium scale commercial fishing — fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT; and

- Large commercial fishing — fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.

[131] Land Bank of the Phils. v. Colarina, 644 Phil. 76, 91 (2010) [Per J. Nachura, Second Division]; Land Bank of the Phils. v. Rufino, 617 Phil. 608, 619-620 (2009) [Per J. Carpio Morales, Second Division].

[132] Carolina Industries, Inc. v. CMS Stock Brokerage, Inc., 186 Phil. 492, 516 (1980) [Per J. Antonio, Second Division]. See also Associated Trade Unions v. Trajano, 245 Phil. 293, 297-298 (1988) [Per J. Cruz, First Division].

[133] Section 21. Implementing Rules and Regulations. – The Department of Agriculture, in consultation with concerned government agencies and stakeholders, shall promulgate the implementing rules and regulations of this Act, within six (6) months from the effectivity of this Act.

[134] See People v. Sandiganbayan (1st Division), G.R. No. 229656, November 24, 2021 [Notice, Second Division]; Bangko Sentral ng Pilipinas v. Commission on Audit, 818 Phil. 429, 453 (2017) [Per J. Leonen, En Banc]; Jardeleza v. Sereno, 741 Phil. 460, 514 (2014) [Per J. Mendoza, En Banc].

[135] 530 Phil. 543 (2006) [Per J. Callejo, Sr., En Banc].

[136] Theo-Pam Trading Corp. v. Bureau of Plant Industry, 894 Phil. 247, 259-261 (2021) [Per J. Inting, En Banc]; Re: Problem of Delays in Cases Before the Sandiganbayan, 422 Phil. 246, 259-260 (2001) [Per J. Pardo, En Banc]; Department of Agrarian Reform Adjudication Board v. Court of Appeals, 334 Phil. 369, 386 (1997) [Per J. Davide, Jr., Third Division].

[137] Id.

[138] TSN dated January 15, 2021, pp. 23-24.

[139] Id. at 27-28.

[140] Id. at 27.

[141] Id. at 29-31.

[142] TSN dated June 13, 2021, pp. 10-12.

[143] TSN dated December 16, 2020, pp. 19-21.

[144] TSN dated January 15, 2021, pp. 19-21.

[145] TSN dated December 18, 2020, p. 12.

[146] SECTION 70. Creation and Composition of the National Fisheries and Aquatic Resources Management Council (NFARMC). — There is hereby created a National Fisheries and Aquatic Resources Management Council hereinafter referred to as NFARMC as an advisory/recommendatory body to the Department. The NFARMC shall be composed of fifteen (15) members consisting of:

- a. the Undersecretary of Agriculture, as Chairman;
- b. the Undersecretary of the Interior and Local Government;
- c. five (5) members representing the fisherfolk and fishworkers;
- d. five (5) members representing commercial fishing and aquaculture operators and the processing sectors;
- e. two (2) members from the academe; and
- f. one (1) representative of NGOs involved in fisheries.

The members of the NFARMC, except for the Undersecretary of Agriculture and the Undersecretary of the Interior and Local Government, shall be appointed by the President upon the nomination of their respective organizations.

[147] See *Bennett v. Spear*, 520 U.S. 154, 176-77 (1997).

[148] Id.

SEPARATE CONCURRING OPINION

LOPEZ, J.:

This Court, as the final arbiter and sworn protector of the rule of law, is once again given the delicate task of resolving the issues of opposing parties, all in hopes of giving life to the words of the 1987 Constitution as the supreme law of the land.

At the onset, the overarching principle in the present controversy is the Regalian doctrine, which "reserves to the

State all natural wealth that may be found in the bowels of the earth[.]”[1] Introduced by Spain during the country's colonial days, this concept is founded on the State's power of dominium, which is the capacity of the State to own or acquire property.[2] As explained by Justice Santiago M. Kapunan in his Separate Opinion in *Cruz v. Sec. of Environment & Natural Resources*:[3]

In its broad sense, the term "jura regalia" refers to royal rights, or those rights which the King has by virtue of his prerogatives. In Spanish law, it refers to a right which the sovereign has over anything in which a subject has a right of property or propiedad. These were rights enjoyed during feudal times by the king as the sovereign.

The theory of the feudal system was that title to all lands was originally held by the King, and while the use of lands was granted out to others who were permitted to hold them under certain conditions, the King theoretically retained the title. By fiction of law, the King was regarded as the original proprietor of all lands, and the true and only source of title, and from him all lands were held. The theory of jura regalia was therefore nothing more than a natural fruit of conquest.[4] (Citations omitted)

Eventually, this concept evolved and is practically of Philippine creation, having been embodied in the Constitution. Article XII, Section 2 reads:

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 Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In case of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

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

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.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

To be sure, the Regalian doctrine extends not only to land but to all natural resources. Inherent to the State's ownership is its concomitant duty to protect "the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone.”[5]

Given the abundance of our marine wealth, the protection of Philippine waters and its resources by the State and its organs is all the more warranted. Data from 2020 alone reveals that the Philippines ranked 8th among the top fish producing countries in the world, constituting 2.065 million metric tons of the total world production of

211.87 million metric tons. With regard to aquaculture production, the country ranked 11th in the world, while it ranked as the 4th largest producer of aquatic plants, including seaweed. Domestically, the fishing industry's contribution to the country's Gross Domestic Product was PHP 273.41 billion in 2020.^[6]

This constitutional duty of the State became the impetus for the Bureau of Fisheries and Aquatic Resources to issue Fisheries Administrative Order No. 266 (FAO No. 266), which has the objective of achieving the "conservation and management of fisheries and aquatic resources in the Philippines" through the installation of a Monitoring, Control, and Surveillance system.^[7] In brief, FAO No. 266 amended the previous FAO No. 260, requiring all commercial Philippine-flagged fishing vessels to comply with the mandatory implementation of Vessel Monitoring Measures and Electronic Reporting System.

It is this very issuance that precipitated the instant controversy. After being subjected to the crucible of constitutional scrutiny, the ponencia held that FAO No. 266 infringes on the constitutional rights of respondents against unreasonable searches and seizures, to due process, and to the equal protection of the law.^[8]

I concur in the ponencia's final outcome. Nevertheless, I offer my views on certain issues, especially on trade secrets involving proprietary rights in relation to state interest.

Propriety of declaratory relief as a remedy

To echo the ponencia, the resort to a Petition for Declaratory Relief was proper in this case. As basis, the ponencia invoked the ruling in *Republic v. Pryce Corporation, Inc.*^[9] In that case, this Court laid down the following requisites in order to appropriately avail of a petition for declaratory relief:

- (1) [T]he subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.^[10] (Citation omitted)

Of particular significance is the third requisite, which provides that "there must have been no breach of the documents in question." Expounding on this requisite, this Court, in *Pryce*, clarified that "a court can no longer assume jurisdiction over an action for declaratory relief if its subject, i.e., statute, deed, or contract, has already been contravened prior to the filing of the action"^[11] and that when "the statute, deed, or contract has already been breached or violated, the remedy of the aggrieved party is to file the appropriate ordinary civil action in court."^[12]

The subject issuance in this case is FAO No. 266. Relevantly, Section 24, Chapter 4 provides that "[n]o commercial or distant water fishing vessel shall engage in fishing activity without complying with the vessel monitoring measures and electronic reporting system set herein."

During the deliberation, Senior Associate Justice Marvic M.V.F. Leonen raised that ultimately, the standard for invoking declaratory relief lies on the "imminence and inevitability of litigation if the issue—here, the constitutionality of [FAO No. 266]—is not judicially settled."^[13] This is consistent with this Court's ruling in *Pryce*, to wit:

The determination of sufficient facts is more nuanced in petitions for declaratory relief. Applying the third and fourth requisites for a declaratory relief action, We must locate the fine point where there exists an actual case or controversy, yet there is no breach of the documents in question. On this note, former Chief Justice Moran opined that accomplished physical wrong need not be alleged in a petition for declaratory relief.

This is best explained in the case of *Republic v. Roque*, where a petition for declaratory relief was filed by private respondents to assail the constitutionality of [Republic Act No.] 9372, or the Human Security Act of 2007. We explained that a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. The term 'ripening seeds' means "not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full-blown battle that looms ahead." The concept describes "a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration."

Following the disquisition in *Roque*, in a petition for declaratory relief, there are "sufficient facts" when there is a showing of an imminent and inevitable litigation if the issue is not judicially settled. The same rule was declared in *CJH Development v. BIR* where We ruled that ripeness in declaratory relief cases means that litigation is inevitable or there is no adequate relief available in any other form or proceeding. To require more than this standard will already negate the requirement that declaratory relief cases should be filed before any breach.[14] (Emphasis in the original, citations omitted)

Finally, this Court, in *Universal Robina Corporation v. Department of Trade and Industry*,^[15] echoed *Pryce* and declared that a petition for declaratory relief involving constitutional challenges would likely prosper, so long as there is a showing of a "clear and convincing contrariety of legal rights."^[16]

Applying this Court's recent rulings, it is without question that the prime issue in this case—whether FAO No. 266 is unconstitutional—has yet to be judicially settled. Further, there is a clear and convincing showing that a contrariety of legal rights exists between the parties: On one hand, petitioner maintains the constitutionality of FAO No. 266 in light of the State's mandate to conserve its fisheries, while private respondents insist that the implementation of FAO No. 266 infringes on their established constitutional rights.

In these lights, I am in full concurrence with regard to the ponencia's conclusion that the resort to a Petition for Declaratory Relief was proper.

Considerations in declaring fishing activities as trade secrets

I submit that the compilation of all information that would ensure a plentiful catch is tantamount as trade secrets. To recall, the ponencia found that the information gathered by the Vessel Monitoring System (VMS) may be contemplated as trade secrets, due to the "method, technique, or process"^[17] employed by private respondents "that would enable them to gain advantage over their competitors who do not possess or have not gathered the same information."^[18] To bolster this conclusion, the ponencia made clear that petitioners themselves, through their witnesses, readily agreed that the information gathered by the VMS is considered as trade secrets in the fishing industry.^[19]

Given the factual antecedents of this case, the ponencia aptly seized the opportunity to elaborate on the rarely explored concept of trade secrets. Indeed, it is high time for jurisprudence to fortify and enrich our understanding of intellectual property. Towards this end however, certain issues must be brought to light to crystallize our still lacking, yet evolving, jurisprudence on trade secrets.

To begin with, the recognition of trade secrets as intellectual property, and is therefore protected by law, is moored in Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines (Intellectual Property Code). Section 4 provides:

Section 4. Definitions. — 4.1. The term "intellectual property rights" consists of:

a) Copyright and Related Rights;

- b) Trademarks and Service Marks;
- c) Geographic Indications;
- d) Industrial Designs;
- e) Patents;
- f) Layout-Designs (Topographies) of Integrated Circuits; and
- g) Protection of Undisclosed Information (n, TRIPS). (Emphasis supplied)

Notably, the Intellectual Property Code is the embodiment of the Philippines' compliance to the Agreement on Trade-Related Aspects of Intellectual Property Rights, more commonly known as "TRIPS," having signed the same on June 6, 1997. More particularly, Article 39 of the TRIPS explicitly mandates member countries to protect undisclosed information:

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

In the same vein, Philippine jurisprudence lends further understanding to the concept and nature of trade secrets. As early as 1989, this Court, in *Congressman Garcia v. Board of Investments*,^[20] already established that "trade secrets and confidential, commercial and financial information[. . .] and matters affecting national security"^[21] are exempt from public scrutiny. This doctrine was reiterated in the 1998 ruling in *Chavez v. Presidential Commission on Good Government*,^[22] where this Court emphasized that trade secrets pursuant to the Intellectual Property Code were placed at par and considered analogous to banking transactions, declaring both pieces of information "exempted from compulsory disclosure."^[23] Perhaps, the seminal case on trade secrets is *Air Philippines Corp. v. Pennswell, Inc.*^[24] Decided nearly a decade after *Chavez*, this Court articulated a definition of trade secrets, while drawing extensively from American jurisprudence to establish governing standards by which particular information may constitute as trade secrets. Pertinent portions read:

A trade secret is defined as a plan or process, tool, mechanism[,] or compound known only to its owner and

those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

(1)

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

(2)

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

(3)

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

(4)

the value of the information to the employer and to competitors;

(6)

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

(7)

the extent to which the information could be easily or readily obtained through an independent source.[25]
(Citations omitted)

As with Garcia and Chavez, this Court, in *Air Philippines*, harped on the necessity that such information be granted protection, emphasizing that those seeking its disclosure should proffer compelling reasons for this Court to "lift the veil of confidentiality"[26] that safeguard trade secrets.

Fishing activities as trade secrets may not be protected through the invocation of the constitutional right to privacy. Nevertheless, it is still accorded protection from other statutes and rules

Guided by the foregoing principles, our statutes, read alongside developing jurisprudence, teach that trade secrets are shielded from disclosure. Nevertheless, parties who seek to invoke such safeguards bear the burden of identifying its legal basis.

On this score, the ponencia clarified that trade secrets may not appropriately seek protection via the constitutional right to privacy. The ponencia expounded that since FAO No. 266 merely infringed on their economic rights and interests, and not on any of their fundamental rights as enshrined under the Constitution, they are not entitled to invoke the right to privacy. More, the ponencia raised that the right to privacy only corresponds, and may only be invoked by individuals, and not juridical entities, such as private respondents in this case.[27]

I agree.

The right to privacy, while accorded independent constitutional recognition, is intimately intertwined with the right to liberty, as embedded in the due process clause of the Constitution:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

This Court, in *Morfe v. Mutuc*, [28] further elaborated:

4. The due process question touching on an alleged deprivation of liberty as thus resolved goes a long way in disposing of the objections raised by plaintiff that the provision on the periodical submission of a sworn statement of assets and liabilities is violative of the constitutional right to privacy. There is much to be said for this view of Justice Douglas: "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom." As a matter of fact, this right to be let alone is, to quote from Mr. Justice Brandeis "the most comprehensive of rights and the right most valued by civilized men."

The concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect. As Laski so very aptly stated: "Man is one among many, obstinately refusing reduction to unity. His separateness, his isolation, are indefeasible; indeed, they are so fundamental that they are the basis on which his civic obligations are built. He cannot abandon the consequences of his isolation, which are, broadly speaking, that his experience is private, and the will built out of that experience personal to himself. If he surrenders his will to others, he surrenders his personality. If his will is set by the will of others, he ceases to be master of himself. I cannot believe that a man no longer master of himself is in any real sense free."

Nonetheless, in view of the fact that there is an express recognition of privacy, specifically that of communication and correspondence which "shall be inviolable except upon lawful order of Court or when public safety and order" may otherwise require, and implicitly in the search and seizure clause, and the liberty of abode, the alleged repugnancy of such statutory requirement of further periodical submission of a sworn statement of assets and liabilities deserves to be further looked into.[29] (Emphasis supplied, citations omitted)

By operating within the penumbra of the right to liberty, any action of the State that would transgress a person's right to privacy must adhere to the due process requirements of the Constitution. This Court, in *City of Manila v. Hon. Laguio, Jr.*, [30] expounded on the aspects of the guaranty of due process of law as a limitation on all State actions, as follows:

This clause has been interpreted as imposing two separate limits on government, usually called "procedural due process" and "substantive due process."

Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Classic procedural due process issues are concerned with what kind of notice and what form of hearing the government must provide when it takes a particular action.

Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there

is a sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can, prove that the law is necessary to achieve a compelling government purpose.[31] (Citations omitted)

Extending its judicial gaze, this Court, in the later case of *Philippine Stock Exchange, Inc. v. Secretary of Finance*,^[32] also acknowledged that the right to privacy is both recognized and enshrined under two more constitutional provisions, specifically under the Bill of Rights: "Section 2 on unreasonable searches and seizures, and Section 3 on privacy of communication and correspondence:"^[33]

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Concurring with the ruling of the ponencia, private respondents' reliance on the constitutional right to privacy is misplaced.

Here, it is irrefragable that they invoked such right to solely protect their economic and business interests, as they sought to restrain the disclosure of their exclusive fishing grounds to ensure a plentiful catch as against other competitors. As stressed in *Air Philippines*, trade secrets are subject to protection primarily for their economic value: "[t]rade secrets should receive greater protection from discovery, because they derive economic value from being generally unknown and not readily ascertainable by the public."^[34] As demonstrated by jurisprudence, the right to privacy is not a catchall shield for economic and business concerns; rather it serves to safeguard liberty, to secure persons against unreasonable searches and seizures, and to preserve the privacy of communication and correspondence.

While not expressly discussed in the ponencia, it bears mentioning that although private respondents may not validly invoke the constitutional right to privacy, their trade secrets may nonetheless be accorded legal protection.

Trade secrets may draw protection from statutes and even from rules of procedure promulgated by this Court.

Foremost, the Revised Penal Code punishes any person who divulges trade secrets with abuse of his or her office or when divulging such information would be done to the prejudice of a manufacturing or industrial establishment:

ARTICLE 291. Revealing Secrets With Abuse of Office. — The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any manager, employee, or servant who, in such capacity, shall learn the secrets of his principal or master and shall reveal such secrets.

ARTICLE 292. Revelation of Industrial Secrets. — The penalty of prisión correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon the person in charge, employee or workman of any manufacturing or industrial establishment who, to the prejudice of the owner thereof, shall reveal the secrets of the industry of the latter.

Along the same lines, Republic Act No. 6969, otherwise known as the Toxic Substances and Hazardous and Nuclear Wastes Control of 1990, carves out an exception to protect trade secrets: while the public is given access to records, reports, or information concerning chemical substances and mixtures, including safety data submitted, and even data on emission or discharge into the environment, the Department of Environment and Natural Resources, may upon its discretion, consider such information as confidential and may not be released to the public, if the same would divulge trade secrets:

SECTION 12. Public Access to Records, Reports[,] or Notification. — The public shall have access to records, reports, or information concerning chemical substances and mixtures including safety data submitted, data on emission or discharge into the environment, and such documents shall be available for inspection or reproduction during normal business hours except that the Department of Environment and Natural Resources may consider a record, report[,] or information or particular portions thereof confidential and may not be made public when such would divulge trade secrets, production or sales figures or methods, production or processes unique to such manufacturer, processor or distributor, or would otherwise tend to affect adversely the competitive position of such manufacturer, processor or distributor. The Department of Environment and Natural Resources, however, may release information subject to claim of confidentiality to a medical research or scientific institution where the information is needed for the purpose of medical diagnosis or treatment of a person exposed to the chemical substance or mixture. (Emphasis supplied)

For purposes of protecting consumers against deceptive, unfair, and unconscionably sales acts and practices, Republic Act No. 7394, or the Consumer Act of the Philippines, was enacted in 1992. Pertinent in this case, Article 40 expressly prohibits the revealing of any information considered as a trade secret:

ARTICLE 40. Prohibited Acts. — The following acts and the causing thereof are hereby prohibited:

....

f) the using by any person to his own advantage, or revealing, other than to the Department or to the courts when relevant in any judicial proceeding under this Act, any information concerning any method or process which as a trade secret is entitled to protection[.]

Finally, to further bolster the need to protect trade secrets, the Revised Rules on Evidence^[35] bars any person from compelling another to testify about any trade secret, except if its nondisclosure would cause the concealment of fraud or the commitment of any injustice. It must be observed that even in cases of valid disclosure, the Revised Rules mandate that courts should undertake certain protective measures to secure the interests of the owner of the trade secrets:

SECTION 26. Privilege Relating to Trade Secrets. — A person cannot be compelled to testify about any trade secret, unless the [nondisclosure] will conceal fraud or otherwise work injustice. When disclosure is directed, the court shall take such protective measure as the interest of the owner of the trade secret and of the parties and the furtherance of justice may require.

All things considered, trade secrets merit protection in the eyes of the law: not only do they encourage innovation, but they also preserve private interests, galvanize competition, and even maintain fair play in the marketplace. Ultimately, given that trade secrets seek to uphold economic and business interests, protection is appropriately pursued through certain statutes and rules, rather than through the constitutional right to privacy.

Trade secrets, as proprietary rights, must concede to the interests of the State

Advancing the discussion, the protection of trade secrets is necessarily limited when it comes into conflict with paramount state interests.

On one hand, this Court, in *Air Philippines*, held that "trade secrets constitute proprietary rights."^[36] Proprietary rights, "also termed property rights, are the rights that accompany legal ownership of tangible or intangible property; rights over or in respect of property."^[37] On the other, the interest of the State is a paramount consideration in the utilization of natural resources. As enshrined under the Constitution, the "exploration, development[,] and utilization of natural resources shall be under the full control and supervision of the State."^[38] Consonant thereto, the government is empowered to enact any and all measures to protect and regulate the use of natural resources. After all, "this Court recognizes the wide latitude of discretion possessed by the government in determining the appropriate actions to be taken to preserve and manage natural resources, and the proper parties who should enjoy the privilege of these resources."^[39]

Thus, while it is unquestionable that proprietary rights warrant respect, they must necessarily yield to state interests, such as the protection and utilization of natural resources in this case.

Examples may be drawn from jurisprudence. For instance, private persons' rights over the State's forestry resources are delimited through the government's issuance of timber licenses, permits, and license agreements. Such instruments are legitimate tools of the State to ensure that the rights of private parties never become irrevocable, nor may they ripen into ownership. As declared by this Court in *Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*:^[40]

Timber licenses, permits[,] and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced[,] or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause.^[41]

With regard to mining rights and privileges, this Court has likewise recognized the power of the State to protect mineral resources through the issuance of exploration permits. Operating as licenses, these permits do not vest its holders any permanent or irrevocable right over the mining grounds or any part thereof. The ruling in *Southeast Mindanao Gold Mining Corp. v. Balite Portal Mining Coop.*^[42] is instructive:

As correctly held by the Court of Appeals in its challenged decision, EP No. 133 merely evidences a privilege granted by the State, which may be amended, modified[,] or rescinded when the national interest so requires. This is necessarily so since the exploration, development[,] and utilization of the country's natural mineral resources are matters impressed with great public interest. Like timber permits, mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the [nonimpairment] of contract and due process clauses of the Constitution, since the State, under its all-encompassing police power, may alter, modify[,] or amend the same, in accordance with the demands of the general welfare.^[43] (Citations omitted)

As concluded from these pivotal cases, private usage has consistently yielded to State interests with regard to the utilization and exploitation of natural resources. By implication then, the private use of natural resources is but a mere privilege that may be subject to regulation when national interests suitably necessitate. Applying these to the instant case, the ponencia astutely concluded that notwithstanding the fact that the subject information may be regarded as trade secrets, petitioners do not enjoy the right to privacy on such information, given that trade secrets merely relate to their economic interests, which should readily give way to state interests.

The protection of trade secrets gives rise to the need to clarify evidentiary standards

To be sure, jurisprudence has likewise established evidentiary standards on what information would be considered

as trade secrets. In *Cocoland Development Corp. v. NLRC*,^[44] this Court established that a naked contention of a party on what constitutes a trade secret, absent any further substantiation, is erroneous and deserves scant consideration. In other words, any determination as to the confidential nature of technologies, processes, formulae, or other so-called trade secrets "must have a substantial factual basis which can pass judicial scrutiny."^[45]

Petitioner's naked contention that its own determination of what constitutes a trade secret should be binding and conclusive upon public respondent is erroneous and dangerous, and deserves the barest consideration. As prudently observed by the Solicitor General, such a stand is contrary to the State's policy of affording protection to labor. Sustaining such contention would permit an employer to label almost anything a trade secret, and thereby create a weapon with which he/it may arbitrarily dismiss an employee on the pretext that the latter somehow disclosed a trade secret, even if in fact there be none at all to speak of. Any determination by management as to the confidential nature of technologies, processes, formulae[,] or other so-called trade secrets must have a substantial factual basis which can pass judicial scrutiny. This is but an ineludible corollary of the time-tested principle that "(t)he rules, instructions[,] or commands in order to be a ground for discharge on the score of disobedience, must be reasonable and lawful, must be known to the employee, and must pertain to the duties which the employees have been engaged to discharge." A fictitious or [nonexistent] "secret" (or a publicly known one as in the instant case) can in no wise be the basis of a reasonable and lawful rule in company policy regarding confidentiality.^[46] (Emphasis supplied, citation omitted)

In the instant case, the substantiation made by private respondents to convince this Court that the information on fishing grounds constitute trade secrets were the judicial affidavits of Peter Paul D. Santos and Ferdinand Y. Lim.^[47] Further, a perusal of the assailed RTC Decision proves that aside from private respondents' two witnesses, the RTC made use of testimonial evidence from a fishing vessel operator to determine that fishing grounds must be regarded as trade secrets.^[48] It must also be noted that the witnesses for petitioners, including the Office of the Solicitor General himself, admitted that information on fishing grounds are considered as trade secrets.^[49]

Simply put, the ponencia laid down particular evidentiary standards on trade secrets, which may constitute express admission of parties, substantiated by testimonial evidence from witnesses. Accordingly, for the guidance of the Bench and the Bar, such pieces of evidence are crucial and, if presented by the alleging party, may sufficiently rise to the level of "substantial factual basis" as prescribed by jurisprudence.

In closing, I wish to reiterate my full concurrence with the ponencia. Given its constitutional underpinnings, the conclusions and issues threshed out has ensured that the noble objectives of our fishing laws are upheld without disrupting the regulated and privileged use of the Philippine waters by private persons and entities. More importantly, this case, given its novel issues, has the potential to create an indelible mark in intellectual property jurisprudence, to serve as a guidepost for resolving future controversies.

[1] *Republic v. Court of Appeals*, 243 Phil. 381, 383 (1988) [Per J. Cruz, First Division].

[2] JOAQUIN BERNAS, SJ., *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 1009 (1996).

[3] 400 Phil. 904 (2000) [Per Curiam, En Banc].

[4] *Id.* at 1043-1044.

[5] CONST., art. XII, sec. 2, par. 2.

- [6] Department of Agriculture, Philippine Fisheries Profile 2020, p. 9.
- [7] Fisheries Administrative Order No. 266 (2020).
- [8] See ponencia, p. 81.
- [9] 937 Phil. 639 (2023) [Per J. Zalameda, En Banc].
- [10] Id. at 644.
- [11] Id. at 643. (Citation omitted)
- [12] Id. at 643-644. (Citation omitted)
- [13] See ponencia, p. 22.
- [14] 937 Phil. 639, 644-645 (2023) [Per J. Zalameda, En Banc].
- [15] 936 Phil. 17 (2023) [Per J. Leonen, En Banc].
- [16] Id. at 29. (Citation omitted)
- [17] See ponencia, p. 47.
- [18] Id.
- [19] Id. at 49.
- [20] 258 Phil. 167 (1989) [Per J. Griño-Aquino, En Banc].
- [21] Id. at 177.
- [22] 360 Phil. 133 (1998) [Per J. Panganiban, First Division].
- [23] Id. at 161.
- [24] 564 Phil. 774 (2007) [Per J. Chico-Nazario, Third Division].
- [25] Id. at 784-786.
- [26] Id. at 799.
- [27] Ponencia, p. 54.
- [28] 130 Phil. 415 (1968) [Per J. Fernando, En Banc].
- [29] Id. at 433-434.
- [30] 495 Phil. 289 (2005) [Per J. Tinga, En Banc].
- [31] Id. at 311-312.
- [32] 924 Phil. 615 (2022) [Per J. Hernando, En Banc].
- [33] Id. at 643. (Citation omitted)
- [34] *Air Philippines Corp. v. Pennswell, Inc.*, 564 Phil. 774, 799 (2007) [Per J. Chico-Nazario, Third Division]. (Emphasis in the original, citation omitted)
- [35] A.M. No. 19-08-15-SC (2019).

[36] *Air Philippines Corp. v. Pennswell, Inc.*, 564 Phil. 774, 785 (2007) [Per J. Chico-Nazario, Third Division].

[37] Legal Information Institute, Cornell Law School, *Wex Legal Dictionary*, available at <https://www.law.cornell.edu/wex> (last accessed on January 12, 2026).

[38] *Miners Asso. of the Phil. v. Hon. Factoran, Jr.*, 310 Phil. 113, 131 (1995) [Per J. Romero, En Banc].

[39] *Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*, 268 Phil. 739, 750 (1990) [Per J. Cortes, Third Division].

[40] 268 Phil. 739 (1990) [Per J. Cortes, Third Division].

[41] *Id.* at 750.

[42] 429 Phil. 668 (2002) [Per J. Ynares-Santiago, First Division].

[43] *Id.* at 682.

[44] 328 Phil. 351 (1996) [Per J. Panganiban, Third Division].

[45] *Id.* at 361-362.

[46] *Id.*

[47] See Comment, pp. 12-14.

[48] See RTC Decision, p. 19.

[49] See ponencia, pp 49-51.

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