

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 6373



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Introduced by **REPRESENTATIVE EDWARD S. HAGEDORN**

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EXPLANATORY NOTE

The 1987 Constitution provides that “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.” Likewise, the Constitution also provides that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. These provisions make it clear that it is the responsibility of the State to craft laws that will conserve and protect the country's natural habitat, biodiversity and flow of the ecosystem of natural resources and marine environment.

Additionally, the Constitution mandates that the Congress shall determine, by law, the specific limits of national parks, marking their boundaries on the ground and that such national parks shall be conserved and may not be increased nor diminished, except by law.

The West Philippine Sea (WPS) is part of the Philippines’ Exclusive Economic Zone (EEZ) located within the bounds of the South China Sea. Panatag (Scarborough) Shoal, Kalayaan Island Group, and parts of Spratly Islands are found within the WPS. Republic Act No. 9522, or "An Act to Define the Baselines of the Territorial Sea of the Philippines", as amended by Section 1 of Republic Act No. 5446, specifically states, that:

“Sec. 2. The baseline in the following areas over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as "Regime of Islands" under the Republic of the Philippines consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

a) The Kalayaan Island Group as constituted under Presidential Decree No. 1596; and

b) Bajo de Masinloc, also known as Scarborough Shoal.”

As early as 2002, several ASEAN countries signed the Declaration on the Conduct of Parties in the South China Sea (DOC) to “promote a peaceful, friendly and harmonious environment in the South China Sea for the enhancement of stability, economic growth and prosperity in the region.” It provided for various ways on how to amicably enforce the provisions of the UNCLOS and other treaties involving the South China Sea, as well as to move for amicable settlement with regard to jurisdictional disputes.

One such provision of the UNCLOS is Article 123, which requires coastal states in semi-enclosed seas to “cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention... with respect to the protection and preservation of the marine environment.”

In 2017, various environmentalists filed a petition before the International Union for the Conservation of Nature (IUCN) World Conservation Congress to declare the WPS as a Marine Peace Park. This move is seen as a step forward in protecting the bio-diverse marine resources in the area. The Center for Environmental Legal Studies in New York led the filing of the petition, together with the Ecological Society of the Philippines, the Sierra Club and similar organizations from Australia, Bangladesh, Lebanon and Pakistan, among others.

According to de Groot et. al. (2012), coral reefs are the single most valuable ecosystem. A hectare, or about 2.5 acres, of reef can produce a potential value of approximately US \$350,000 a year. The coral reefs in the Spratlys, which serve as the breeding ground of fish in the South China Sea, comprise 34 percent of the world’s total coral reefs, despite the South China Sea occupying only 2.5 percent of world’s total ocean and sea surface. As such, the South China Sea is one of the richest marine areas in the world which is the home to diverse marine ecosystems with over 3,000 species of fish and 600 species of coral reef.

However, the activities and undertakings—borne out of territorial disputes among several Asian nations, including the Philippines—being done in the area have led to significant environmental degradation in the WPS. Said activities include overfishing; poaching; and large-scale ocean filling or reclamation, among others.

The Arbitral Tribunal found that the coral reef ecosystem of several reefs suffered “severe and irreparable harm” and were “permanently destroyed” due to land reclamation and construction of artificial islands, installations, and structures in the area. Among the affected reefs include Mischief Reef (Panganiban Reef), Cuarteron Reef (Calderon Reef), Fiery Cross Reef (Kagitingan Reef), Gaven Reef (North)

(Burgos Reef), Johnson Reef (Mabini Reef), Hughes Reef, and Subi Reef (Zamora Reef).⁵ This is the first time that an international tribunal applied the United Nations Convention on the Law of the Sea (UNCLOS) provision on the protection and preservation of the marine environment.

The record shows that from 2014 to 2016, China deployed dozens of dredgers in the Spratlys. The rotating cutters of these dredgers pulverize the coral reef and the hard sediment on the seabed. The pulverized materials are sucked through a nozzle and siphoned through a pipe into the ship. Then, they are pushed by pressure through a floating pipe and deposited on the rim of the reef (Watkins, 2016). This kills all the coral reefs in the atoll. It could take as long as 30 million years for the reefs of an atoll to form. Marine biologist Dr. John McManus, who studied marine life in the Spratlys, called China's reclamation projects in the WPS as the "most rapid permanent loss of coral reefs in human history." (Larson, 2015)

The fish consumption of certain countries surrounding the South China Sea has also increased over the past seven years. From 2010 to 2017, the fish and seafood consumption per capita in the South China Sea grew from 32.16 kg to 38.17 kg in China, 33.90 kg to 37.66 kg in Vietnam, 27.22 kg to 44.67 kg in Indonesia. The overfishing, both legal or illegal as well as unregulated fishing, also contributed to the depletion of the marine ecosystem in the South China Sea.

In 2018, a study⁶ recorded approximately two million fishing fleets operating in the South China Sea, both motorized and non-motorized. In the same year, approximately 27 million fishes were captured both inland and marine. These statistics are far from the numbers today, where marine equipment and technology are well researched and developed. The further constructions and on-going fishing within the area will greatly affect and compromise the capacity of the reefs to sustain and replenish local fisheries.

Dr. McManus has warned that if the areas discussed remain unprotected, "we are headed toward a major, major fisheries collapse in a part of the world where [that] will lead to mass starvation."

Republic Act No. 11038 or the "Expanded National Integrated Protected Areas System Act of 2018," as amended by Section 6 of Republic Act No. 7586, provides that:

"Sec. 5. Additional Areas to be Included into the System. - Upon the recommendation of the DENR, additional areas with unique physical features, anthropological significance and high biological diversity may be proposed for inclusion as part of the System. x x x"

As discussed above, the South China Sea, where the WPS is located, has high biological diversity and is unfortunately suffering significant environmental

degradation due to overfishing, poaching, and land-filling or reclamation. For this reason the establishment of a Marine Protected Area around the KIG and the Scarborough Shoal is needed to achieve the objective of environmental protection.

According to local marine experts of the University of the Philippines - Marine Science Institute, the bigger the Marine Protected Area (MPA), the more effective the protection of the marine ecosystem. Local studies have further shown that an MPA of at least ten (10) square kilometers is preferable. 10 sq/km is equivalent to roughly three (3) square nautical miles or roughly three (3) kilometer radius which should be declared as strict protected area but shall be subjected to the ruling of the Arbitral Tribunal. According to the said ruling, the right to engage in traditional fishing in the Scarborough Shoal is given regardless of who ultimately has sovereignty over the same. As such, it is proposed that the three (3) nautical miles radius surrounding the KIG and the Scarborough Shoal be declared as a Marine Protected Area with strict regulations as to activities therewith consistent with the Expanded National Integrated Protected Areas System Act of 2018. The said proposal shall likewise be subject and consistent to the ruling of the Arbitral Tribunal that allowed traditional fishing around the Scarborough Shoal.

It is for this reason that this Bill aims to help Filipinos fulfill the Constitutionally mandated role to conserve and protect the country's environment, and preserve the mentioned coral reefs and atolls, by declaring all low-tide elevations and high-tide features, and an area of three (3) nautical miles around the KIG and the Scarborough Shoal as a Marine Protected Area consistent with the Expanded National Integrated Protected Areas System Act of 2018 and the ruling of the Arbitral Tribunal. In order to attain the objectives of this Bill, the creation of a PAMB and PAMO covering the Kalayaan Island Group and Scarborough Shoal pursuant to R.A. No. 7586, as amended, are necessary.

In view of the foregoing, approval of this bill is highly and earnestly sought.


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Representative
Third District, Province of Palawan

Republic of the Philippines
HOUSE OF REPRESENTATIVES

Quezon City, Metro Manila

NINETEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 6373

Introduced by **REPRESENTATIVE EDWARD S. HAGEDORN**

AN ACT DECLARING THE THREE (3) NAUTICAL MILES SURROUNDING THE KALAYAAN ISLAND GROUP AND SCARBOROUGH SHOAL IN THE WEST PHILIPPINE SEA AS MARINE PROTECTED AREA UNDER REPUBLIC ACT NO. 7586 OR THE NATIONAL INTEGRATED PROTECTED AREAS SYSTEM ACT OF 1992, AS AMENDED BY REPUBLIC ACT NO. 11038, OR THE EXPANDED NATIONAL INTEGRATED PROTECTED AREAS SYSTEM ACT OF 2018

Be it enacted by the Senate and House of Representatives of the Philippines in Congress

1 **Section 1. Short Title.** - This act shall be known as the “*KIG and Scarborough Shoal Marine*
2 *Protected Area Act of 2022*”

3 **Section 2. Declaration of Policy** – Article II, Section 16 of the 1987 Constitution declares that
4 the State shall protect and advance the right of the people to a balanced and healthful ecology
5 in accord with the rhythm and harmony of nature.

6 Likewise, Republic Act No. 7586 or the *National Integrated Protected Areas System Act of*
7 *1992* (NIPAS), as amended by Republic Act No. 11038, or the *Expanded National Integrated*
8 *Protected Areas System Act of 2018* (E-NIPAS), mandates the State to secure for the Filipino
9 people of present for future generations, the perpetual existence of all native plants and animals

through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution.

Scientific studies¹ established that coral reefs in the Spratlys comprise 34 percent of the world's total coral reefs. These serve as the breeding ground of fish in the South China Sea despite occupying only 2.5 percent of the world's total ocean and sea surface making the South China Sea as one of the richest marine areas in the world, which is home to diverse marine ecosystems with over 3,000 species of fish and 600 species of coral reef. It is hereby declared the policy of the State to protect the ecology of the areas surrounding the Kalayaan Island Group (KIG) and the Scarborough Shoal.

Consistent with Article II, Section 2 of the 1987 Constitution to adopt the generally accepted principles of international law as part of the law of the land and to adhere to the policy of peace, equality, justice, freedom, cooperation and amity with all nations as key in attaining the protection, conservation, preservation, and promotion of the biodiversity, ecosystem, and all other natural resources, we adhere to Article 123 of the United Nations Convention on the Law of the Seas (UNCLOS), which requires the Philippines and other coastal states in semi-enclosed seas like the South China Sea to cooperate with each other in the exercise of their rights and in the performance of their duties under the said Convention with respect to the protection and preservation of the marine environment.

Section 3. Definition of Terms – For purposes of this Act, the following terms shall be defined as follows:

- a. **Arbitral Tribunal Ruling** – refers to the July 12, 2016 ruling rendered by the arbitral tribunal of the Permanent Court of Arbitration in The Hague adjudicating the Philippines' case against China in the West Philippine Sea in accordance with the 1982 UNCLOS;
- b. **Atolls** – refers to a reef with or without an island situated on it surrounded by the open sea, that encloses or nearly encloses a lagoon;

¹ Rudolf de Groot, et al., *Global Estimates of the Value of Ecosystems and Their Services in Monetary Units*, 1 Ecosystem Services 50 (2012), <http://www.sciencedirect.com/science/article/pii/S2212041612000101>.

- c. **Buffer Zones** - refers to identified areas outside the boundaries of and immediately adjacent to designated protected areas that need special development control in order to avoid or minimize harm to the protected area;
- d. **Kalayaan Island Group** – refers to the group of islands and islets located in the West Philippine Sea including the seabed, sub-soil, continental margin and airspace, declared to be subject to the sovereignty of the Philippines under Presidential Decree No. 1596, and was likewise declared as part of the Regime of Islands by Republic Act No. 9522, or *An Act to Define the Baselines of the Territorial Sea of the Philippines*;
- e. **Marine Protected Area** - refers to identified portions of water set aside by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation;
- f. **National Park** - refers to the lands of the public domain classified as such in the Constitution which include all areas under the NIPAS pursuant to this Act, primarily designated for the conservation of native plants and animals, their associated habitats and cultural diversity;
- g. **Protected Area** - refers to identified portions of land and/or water set aside by reason of their unique physical and biological diversity and protected against destructive human exploitation;
- h. **Reefs** - refers to a mass of rock or coral which either reaches close to the sea surface or is exposed at low tide;
- i. **Scarborough Shoal** - refers to an area located in the West Philippine Sea which was declared part of the Regime of Islands under R.A. No. 9522;
- j. **Strict Protection Zones (SPZs)** - refers to portions within protected areas that are closed to human activities by virtue of their significant

biodiversity value, high susceptibility to geo-hazard, and identification as permanently dangerous. These areas may also include habitats of threatened species, or degraded areas that are designated for restoration and subsequent protection, regardless of their stages of regeneration;

k. **UNCLOS** – refers to the 1982 United Nations Convention on the Law of the Seas;

l. **West Philippine Sea** – refers to the maritime areas on the western side of the Philippine archipelago within the Exclusive Economic Zones (EEZ) over which the Philippines exercises sovereign jurisdiction including the Luzon Sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as Scarborough Shoal.²

Section 4. Scope – The area covered by the Kalayaan Island Group and Scarborough Shoal Marine Protected Area (KIGSS-MPA) subject of this Act shall be all the areas within three (3) nautical miles from the baselines surrounding the KIG and Scarborough Shoal as established by R.A. No. 9522.

Section 5. Declaration of Protected Area and Strict Protection Zone – It is hereby declared that the area covering the KIGSS-MPA as specifically identified in the preceding section is hereby declared as a protected area and shall enjoy the benefits and protection afforded by R.A. No. 7586, as amended: *Provided*, That the Secretary of the Department of Environment and Natural Resources (DENR Secretary), upon the recommendation of the Protected Area Management Board (PAMB), shall designate Strict Protection Zones (SPZs) within the KIGSS-MPA in areas with significant biodiversity values or habitats of threatened species, based on a comprehensive biodiversity inventory and assessments: *Provided*, further, That any and all international treaties or rulings, Philippine laws, rules, and regulations involving the protection, conservation of KIGSS-MPA shall be strictly observed and implemented.

² Office of the President Administrative Order No. 29, Series of 2012.

The DENR Secretary, also upon recommendation of the PAMB, may designate areas surrounding the KIGSS-MPA as Buffer Zones for the purpose of providing extra layer of protection where restrictions may be applied.

Section 6. Prohibited Acts – The following are the prohibited acts within the KIGSS-MPA:

- a. Using of any fishing or harvesting gear and practices or any of their variations that destroys coral reefs, seagrass beds or other marine life: *Provided*, that mere possession of such gears within the protected areas shall be prima facie evidence of their use;
- b. Dumping, throwing, using, or causing to be dumped into or placed in the protected area of any toxic chemical, noxious or poisonous substance or nonbiodegradable material, intreated sewage or animal waste or productes whether in liquid, solid, or gas state, including pesticides and other hazardous substances as defined under Republic Act No. 6969 or the *Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990* detrimental to the protected area, or the living things inhabiting in within the protected area;
- c. Littering or depositing refuse or debris within the protected area;
- d. Possessing or using blasting caps or explosives anywhere within the protected area;
- e. Undertaking mineral exploration or extraction within the protected area;
- f. Establishing or introducing exotic species including genetically modified organisms or invasive alien species within the protected area;
- g. Constructing, installing, erecting, or maintaining any kind of structure, fence, or enclosure whether temporary or permanent, within the protected area: *Provided*, that structures and projects for biosphere development shall be allowed: *Provided*, further, that such activities shall be with prior coordination with DENR through the PAMB;

h. Any other act that will tend to or actually result in the disturbance,
killing, destruction, endangerment, devastation, or annihilation of
the natural flora and fauna found within the protected area.

Any violation of this Act shall be prosecuted pursuant to R.A. No. 7586, as amended,
any existing environmental law, rule, or regulation.

Section 7. Creation of the Kalayaan Island Group and Scarborough Shoal Protected Area Management Board and Protected Area Management Office – The Kalayaan Island Group and Scarborough Shoal Protected Area Management Board (KIGGS-PAMB) and the Kalayaan Island Group and Scarborough Shoal Protected Area Management Office (KIGSS-PAMO) are hereby created with the same composition, powers and functions as defined in Sections 9 and 10 of RA 7586, as amended: *Provided*, That the Palawan Council for Sustainable Development, which was created pursuant to Republic Act No. 7611, or the *Strategic Environmental Plan (SEP) for Palawan Act*, shall be included as a member in the KIGSS-PAMB.

Section 8. Management Plan and Engagement of Cooperation of Other Agencies - The KIGSS-PAMB and KIGSS-PAMO shall craft a management plan for the protection of the KIGSS-MPA within one (1) year from the effectivity of this Act, which shall be reviewed and assessed every three (3) years for possible improvements or amendments, or whenever the need arises. It shall include specific strategies and programs for the preservation and protection of atolls, reefs, and corals within the KIGSS-MPA.

The KIGSS-PAMB and KIGSS-PAMO shall engage the cooperation of other Government Agencies in the implementation of their management plan. The Department of Transportation (DOTr), Department of Information and Communications Technology (DICT), Department of Agriculture (DA), and Department of Interior and Local Government (DILG) shall provide assistance in the monitoring of activities within the KIGSS-MPA, which may include, if necessary, the installation of monitoring devices on vessels and establishment of needed facilities within the area.

Section 9. Kalayaan Island Group and Scarborough Shoal Marine Protected Area Joint Oversight Committee – to oversee the effective implementation of this Act, a special

congressional oversight committee to be known as the **Kalayaan Island Group and Scarborough Shoal Marine Protected Area Joint Oversight Committee** (KIGSS-MPA-JOC) composed of the members from the Committees on Natural Resources and Committee on the West Philippine Sea from both upper and lower houses of congress is hereby created. The KIGSS-MPA-JOC, which shall be jointly headed by the Chairpersons of the Committees on Natural Resources from both houses, shall convene biannually, or as often as may be necessary in order to ensure the implementation of this Act.

The KIGSS-PAMB and KIGSS-PAMO shall submit an annual report to the KIGSS-MPA-JOC on the status of the KIGSS-MPA and implementation of this Act.

Section 10. Appropriation – An annual operating budget of at least Ten Million Pesos (Php10,000,000.00) shall be allocated for the implementation of this Act, which shall be sourced from the DENR Biodiversity Management Bureau (BMB) annual appropriations. The annual operation budget for the KIGSS-MPA shall be a separate item from the annual budget proposal of the DENR BMB.

Section 11. Repealing Clause - All laws, rules, regulations, executive orders, presidential decrees or any other issuance contrary to or inconsistent with any of the provisions of this Act are hereby deemed repealed or modified accordingly.

Section 12. Separability Clause - If any provision or part of this Act shall be declared unconstitutional, the remaining provisions which are not affected shall remain in full force and effect.

Section 13. Effectivity - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved.