



Republic of the Philippines
Department of Environment and Natural Resources
Provincial Environment and Natural Resources Office

MIMAROPA Region

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DENR MIMAROPA
RECORDS SECTION
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BY: _____ DATE NO. _____

TIME: _____

March 13, 2023

MEMORANDUM

FOR : The Regional Executive Director
DENR MIMAROPA
1515 DENR By the Bay Bldg., Roxas Boulevard,
Barangay 668, Ermita Manila

THRU : The OIC Regional Assistant Director for Technical Services

FROM : The Provincial Environment and
Natural Resources Officer

SUBJECT : **COMMENT RE: BILL 6373 (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)**

Forwarded is the memorandum dated February 28, 2023 from the Legal Researcher of this office along with the comments on the House Bill 6373 "(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)".

For information and record.



Cc: Conservation and Development Division
MIMAROPA Region

FELIZARDO B. CAYATOC
DENR-PALAWAN
PENRO-RECORDS
RELEASED
By _____
Date: 15 MAR 2023 *Rhea 2023-668*



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE
Province of Palawan

February 28, 2023

DENR PENRO
PALAWAN RECORDS
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BY: 
DATE: 13-03-2023 CN 23-2052

MEMORANDUM

FOR : FELIZARDO B. CAYATOC
Provincial Environment and Natural Resources Officer

FROM : VENUS CELESTE O. AGUILA
Legal Researcher

SUBJECT : COMMENT Re: HOUSE BILL 6373 (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)

This refers to the electronic mail received by PENRO from the Office of Hon. Edward S. Hagedorn, Representative of the Third District of Palawan, concerning House Bill No. 6373 or "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". The undersigned was asked to give a review or comment on the said house bill. Hence this, comment.

House Bill No. 6373 primarily aims to protect the marine resources of the Philippines in its territorial waters/seas in Kalayaan Island Group and Scarborough Shoal in the West Philippine Sea. As stated in the Bill:

*"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."*¹

"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

¹ Sec. 4, House Bill 6373, 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



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 the Environment and Natural Resources (DENR Secretary), upon the recommendation of the Protected Area Management Board (PAMB), shall designate Strict Protection Zones (SPZs) within the KIGGS-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 KIGGS-MPA shall be strictly observed and implemented.

The DENR Secretary, also upon recommendation of the PAMB, may designate areas surrounding the KIGGS-MPA as Buffer Zones for the purpose of providing extra layer of protection where restrictions may be applied.”²

This Bill stressed the importance of conserving and protecting the aquatic resources in the West Philippine Sea (WPS) which is in line and consistent with the UNCLOS, the Philippine Constitution, and the Philippine Laws.

Article 56 of UNCLOS provides:

“Article 56. Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

*(a) sovereign rights for the purpose of exploring and exploiting, **conserving and managing the natural resources**, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

*(iii) **the protection and preservation of the marine environment;***

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall

² Ibid, Sec. 5



act in a manner compatible with the provisions of this Convention."³ (Emphasis supplied)

Further, Article 77 of the UNCLOS states:

Article 77. Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

*4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."*⁴

Also, Sec. 16, Article II of the 1987 Constitution expresses:

*"Section 16. 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."*⁵ (Emphasis supplied)

Further, Section 2, Article XII of the 1987 Constitution confers:

*"Section 2. xxx The State is bound to **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; xxx"*⁶ (Emphasis supplied)

It is therefore the obligation of the State to act and create measures to safeguard our seas. Especially in this critical circumstance where neighboring countries are aggressive in plotting their territorial dominion in the South China Sea and the West Philippine Sea (WPS). Their actions greatly affect the country's irreplaceable marine resources in WPS.

Accounts bare the harsh reality, to wit:

"China has already invaded repeatedly Philippine "national territory" in two separate areas, one in the Kalayaan Island

³ UNCLOS (United Nations Convention on the Law of the Sea of 10 December 1982), Article 56

⁴ Ibid, Article 77

⁵ Philippine Constitution 1987, Sec. 16, Article II, <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

⁶ Ibid, Section 2, Article XII



Group in the Spratlys and the other in Scarborough Shoal. When China seized in 1988 Subi Reef, a submerged area within the

Philippines' ECS and beyond the territorial sea of any high tide feature,¹⁴ China invaded Philippine national territory as defined in the Constitution. When China seized in 1995 Mischief Reef, a submerged area within the Philippines' EEZ and beyond the territorial sea of any high tide feature,¹⁵ China invaded Philippine national territory as defined in the Constitution. When China seized in 2012 Scarborough Shoal, a rock above water at high tide and constituting land territory under international law, China invaded Philippine national territory as defined in the Constitution and as understood in international law. Republic Act No. 9522, amending the Philippine Baselines Law, expressly declares that Scarborough Shoal is part of Philippine territory over which the Philippines exercises "sovereignty and jurisdiction."¹⁷

Also:

"PAG-ASA ISLAND, Palawan, Philippines – More than 300 boats carrying foreign poachers can be seen every day in the Kalayaan Island Group but could not be arrested by government forces due to lack of equipment, officials said.

Kalayaan Mayor Eugenio Bito-onon said poachers from countries like China, Vietnam and Malaysia outnumber local fishermen in their area, which is part of the disputed Spratlys archipelago.

"It's more than 300 boats per day... Since we are claiming Kalayaan to be ours, all of them are (considered) poachers because they did not secure a mayor's permit and they are not registered in the Philippines," Bito-onon said in a recent interview.

"We are missing so much of the resources of the Kalayaan Island. One study said we are losing about P18 billion worth of marine products per year," he added.

xxx

"The ones who benefit (from the marine resources) are poachers," he added.

Bito-onon said some poachers even use dynamite, smuggle endangered turtles and harvest and destroy clams.

"If the destruction of the environment continues, the marine resources will run out," he said. xxx

"We can't even do something in Scarborough (Shoal)," Bito-onon said. xxx

⁷ G.R. No. 212426, RENE A.V. SAGUISAG, et. Al. vs. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., et.al., G.R. No. 212444, BAGONG ALYANSANG MAKABAYAN (BAYAN), et. Al. vs. DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY VOLTAIRE GAZMIN, et.al. (Separate concurring opinion), January 12, 2016



Chinese ships started occupying the area in 2012 after the Philippine Navy tried to arrest Chinese poachers who had harvested endangered marine species. China has since barred local fishermen from entering what was once considered a traditional fishing route. xxx

Kalayaan is a fifth-class municipality in Palawan. It is located in Pag-Asa, the biggest Philippine island in the Spratlys archipelago, which is also being claimed in whole or in part by China, Vietnam, Brunei, Malaysia and Taiwan.”⁸

Moreover:

“The Philippine Coast Guard (PCG) revealed Tuesday, Oct. 4, that four Vietnamese fishermen have been apprehended by authorities after they were allegedly caught in the act of using sodium cyanide, a poisonous compound, in their fishing activities off Pag-asa (Thitu) Island.

The PCG said that the Vietnamese fishermen, whose identities were not made public, were arrested in the vicinity waters off Pag-asa Island in Kalayaan, Palawan last Sept. 18 by joint forces of the PCG Station Kalayaan, Philippine Navy (PN), and Philippine National Police-Maritime Group (PNP-MG).

The joint maritime law enforcement team also intercepted the fishing vessel used by the Vietnamese locally known as “sampan” which was equipped with a compressor. Sampan is a small boat commonly used in East Asia typically with an oar at the stern.

“The fishermen were informed that they violated Sections 91 (poaching in Philippine waters) and 92 (fishing through explosives, noxious or poisonous substance, or electricity) of Republic Act No. 10654 or the Philippine Fisheries Code of 1998,” the PCG said. xxx”⁹

The DENR-CENRO Puerto Princesa City, on the other hand, conducted studies in some parts of the subject area. In the PROTECTED AREA SUITABILITY ASSESSMENT (PASA), the proposed Protected Area was named Eastern Kalayaan Protected Landscape and Seascape and the location of the study site is in the Municipality of Kalayaan, Palawan. The area was assessed in 2017 (CARE-CaDRES Expedition), 2019 (PROTECT WPS), May 2021 (PROTECT WPS 2.0), and February-March 2022 (UPGRADE-CIA). The assessment revealed the following:

“IRREPLACEABILITY:

Presence of restricted range and congregatory species. Hosts multiple threatened coral reefs that provide fish and coral larvae to the entire western coast of the Philippines up to Sulu Sea, as well as to the entire South China Sea (SCS) basin. Home to numerous fish species

⁸ Alexis Romero, 300 boats of foreign poachers spotted daily in Kalayaan Island Group, - The Philippine Star, March 2, 2015 | 12:00am, <https://www.philstar.com/headlines/2015/03/02/1429143/300-boats-foreign-poachers-spotted-daily-kalayaan-island-group>

⁹ Martin Sadongdong, 4 Vietnamese fishermen accosted for illegal fishing off Pag-asa Island Published October 4, 2022, 9:47 AM, <https://mb.com.ph/2022/10/04/4-vietnamese-fishermen-accosted-for-illegal-fishing-off-pag-asa-island/>



VULNERABILITY:

Presence of globally threatened species. Coral reefs threatened by unauthorized/ illegal destructive activities by foreign persons. Climate change and coral mortality. Historical loss of threatened, vulnerable or endangered."¹⁰

xxx

“(ON-SITE OBSERVATION)

xxx

Illegal Unregulated and Unreported (IUU) fishing practices including poaching are observed in the vicinity of Pag-asa Island which are believed to have led to the decline of the condition of the marine environment. Examples of which are observed conduct of “superlight fishing” by foreign fishing vessels (Chinese and Vietnamese), and blast and cyanide fishing activities of Vietnamese at night time as reported by the residents and fisherfolks in the Island. Residents of the Island also reported sightings of foreign vessels illegally harvesting endangered species such as giant clams, some species of corals, and sea turtles. There are also reported incidents of illegal collection/gathering of sea turtle eggs for food by the local residents in the Island. New and emerging threats such as those of marine litter also have become more apparent, with reports of high plastics accumulation in the area in 2019 (Onda et al. 2020). Based on the most recent expeditions in the area, it was also observed that some of these plastic litters are bottles originating from various countries such as Vietnam, Philippines, Malaysia, China and Hongkong, as suggested by their labels. (PROTECT-WPS 2.0 Expedition Report, 2022)."¹¹

Said observation by the DENR validates the situation in the area as reported/documented by the private sector, media, and other government agencies as discussed earlier.

*“Marine conservation begins with securing territorial integrity;”*¹² Hence, REPUBLIC ACT No. 9522 or AN ACT TO AMEND CERTAIN PROVISIONS OF REPUBLIC ACT NO. 3046, AS AMENDED BY REPUBLIC ACT NO. 5446, TO DEFINE THE ARCHIPELAGIC BASELINE OF THE PHILIPPINES AND FOR OTHER PURPOSES settled our territorial jurisdiction/sovereignty over The Kalayaan Island Group as constituted under Presidential Decree No. 1596 and Bajo de Masinloc, also known as Scarborough Shoal which is consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS).

Moreover, in 2016, the Office of the President issued MEMORANDUM CIRCULAR NO. 94, Series of 2016 creating THE NATIONAL TASK FORCE FOR THE WEST PHILIPPINE SEA, where the Department of Environment and Natural Resources is one of its members. This task force’s objective is to protect the country’s national interest and address the WPS issues. Its aim is to achieve a unified action in the West Philippine Sea. *“xxx Consistent with the Constitution, the Philippines’ interests in the West Philippine Sea include the maintenance and protection of*

¹⁰ PROTECTED AREA SUITABILITY ASSESSMENT (PASA), PASA FORM No. 3(SUMMARY SHEET), Page 1

¹¹ PROTECTED AREA SUITABILITY ASSESSMENT (PASA), PASA FORM No. 1(ON SITE OBSERVATION), Page 5

¹² U.S. Ambassador to the Philippines Sung Kim, *The Philippines’ Future Floats in the West Philippine Sea*, Par. 5, JULY 16, 2020, <https://ph.usembassy.gov/the-philippines-future-floats-in-the-west-philippine-sea/>



*Philippine sovereignty, preservation and defense of territorial integrity, and promotion of the welfare and well-being of the Filipino people;*¹³

*“Why is this important? Here in the Philippines, the West Philippine Sea epitomizes the rich marine diversity of this country. In its waters, scientists have discovered hundreds of species of fish, coral, seagrass, and other marine life existing in interdependent systems that teach us about the planet’s complexity, fragility, and resilience. These habitats not only provide the fish that fill Filipino fishing vessels (and Filipino plates), they also serve as spawning grounds for schools that populate seas throughout Southeast Asia. Philippine scientists believe some of the species unique to these waters may also hold the key to biomedical breakthroughs, while climate researchers can study ecosystem changes to measure human impact on the environment.”*¹⁴

Through House Bill 6373, issues concerning the abuses mentioned above in the aquatic/marine resources within the Kalayaan Island Group and Scarborough Shoal will be properly addressed. This proposed Bill will strengthen and cement our territorial authority over WPS.

DENR has a big role in the implementation, in case the proposed Bill becomes a Law, as directed in the provisions of this Bill and in line with the agency’s mandate. According to Title XIV (ENVIRONMENT AND NATURAL RESOURCES), Chapter 1 (GENERAL PROVISIONS) of the Administrative Code:

*“Sec. 1. Declaration of Policy. - (1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal, and **conservation** of the country’s forest, mineral, land, **waters, fisheries**, wildlife, off-shore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and **protecting and enhancing the quality of the environment** and the objective of making the exploration, development and utilization of such natural resources equitably accessible to the different segments of the present as well as future generations.”*¹⁵ (Emphasis supplied)

“Section 2. Mandate. -

*(1) The **Department of Environment and Natural Resources** shall be primarily responsible for the implementation of the foregoing policy.*

*(2) It shall, subject to law and higher authority, be in charge of carrying out the State’s constitutional mandate to control and supervise the exploration, development, utilization, and **conservation** of the country’s natural resources.”*¹⁶ (Emphasis supplied)

¹³ Office of the President of the Philippines, MEMORANDUM CIRCULAR NO. 94, CREATING THE NATIONAL TASK FORCE FOR THE WEST PHILIPPINE SEA

¹⁴ U.S. Ambassador to the Philippines Sung Kim, *The Philippines’ Future Floats in the West Philippine Sea*, Par. 4, JULY 16, 2020, <https://ph.usembassy.gov/the-philippines-future-floats-in-the-west-philippine-sea/>

¹⁵ E.O. No. 292.

¹⁶ *ibid*



Along with the laws cited above, Republic Act No. 11038 OR THE EXPANDED NATIONAL INTEGRATED PROTECTED AREAS SYSTEM ACT OF 2018 was enacted to undertake the actions needed in order for the State to execute its policy and plan to protect our natural resources. As provided in this law:

"Sec. 2. Declaration of Policy. - Cognizant of the profound impact of human activities on all components of the natural environment particularly the effect of increasing population, resource exploitation and industrial advancement, and recognizing the critical importance of protecting and maintaining the natural, biological, and physical diversities of the environment notably on areas with biologically unique features to sustain human life and development, as well as plant and animal life, it is hereby declared the policy of the State to secure for the Filipino 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.

"It is hereby recognized that these areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan to conserve and protect our natural heritage; that effective administration of these areas is possible only through cooperation among the national government, local governments, concerned nongovernment organizations, private organizations, and local communities; that the use and enjoyment of these protected areas much be consistent with the principles of biological diversity and sustainable development.

"To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass ecologically rich and unique areas and biologically important public lands that are habitats of rare and threatened species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as 'protected areas'. The System shall recognize conservation areas and the management regimes being implemented by local government units (LGUs), local communities and indigenous peoples (IPs).

"The State shall ensure the full implementation of this Act, the mobilization of resources for the institutional mechanisms herein established, and the full scientific and technical support needed for the conservation of biodiversity and the integrity of the ecosystems, culture and indigenous practices.""¹⁷

Additionally, REPUBLIC ACT NO. 10654 or 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," provides:

¹⁷ Republic Act No. 11038 OR THE EXPANDED NATIONAL INTEGRATED PROTECTED AREAS SYSTEM ACT OF 2018



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE
Province of Palawan

"SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State:

xxx (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;" x x x

"SEC. 3. Application of its Provisions. – The provisions of this Code shall be enforced in:

(a) all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile Exclusive Economic Zone (EEZ) and continental shelf;

(b) all aquatic and fishery resources whether inland, coastal or offshore fishing areas, including, but not limited to, fishponds, fish pens/cages;

(c) all lands devoted to aquaculture, or businesses and activities relating to fishery, whether private or public lands; and

(d) all Philippine flagged fishing vessels operating in areas governed by a Regional Fisheries Management Organization (RFMO), in the high seas, or in waters of other coastal states."¹⁸

Seeing the Laws conferred, the proposed Bill is congruent with what our National Policy is aiming for, with regard to the protection of our natural resources and in this case, our aquatic resources in KIG and Scarborough Shoal.

In sum, House Bill 6373 is consistent with the UNCLOS', the Constitution's, and the Laws' mandates and does not contradict with any government policy. This proposed Bill is very timely, considering this present situation in the area (KIG and Scarborough Shoal). This will definitely serve the interest of the Country. Hence, DENR must support this proposed Bill.

For your information and guidance.


VENUS CELESTE O. AGUILA

With conformity:


ATTY. JAZMIN D. ALTEA

¹⁸ REPUBLIC ACT NO. 10654 or 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

1/11/23, 9:59 AM

Department of Environment and Natural Resources Mail - Letter re: Meeting on 11 January 20



DENR PENRO
PALAWAN RECORDS
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848 PENRO Palawan <penropalawan@denr.gov.ph>

BY: *[Signature]*
DATE: 01-11-2023 23:05

Wed, Jan 11, 2023 at 9:15 AM

Letter re: Meeting on 11 January 20

Edward Hagedorn <congedhagedorn04@gmail.com>

To: "director@bmb.gov.ph" <director@bmb.gov.ph>

Cc: EdwardHagedorn@gmail.com, "mimaroparegion@denr.gov.ph" <mimaroparegion@denr.gov.ph>, "penropalawan@denr.gov.ph" <penropalawan@denr.gov.ph>, "cenropuertoprincesa@denr.gov.ph" <cenropuertoprincesa@denr.gov.ph>, janicaalizim1983@gmail.com, janicaalizim@gmail.com

Good day!

In addition to the letter of Hon. Edward S. Hagedorn, we are furnishing you the copy of House Bill No. 6373 for your reference.

Thank you very much.

yours truly,

ATTY. ALYZZA MAE S. ORA, R.E.B.
Chief of Staff
Office of Cong. Edward S. Hagedorn
Third Legislative District, Province of Palawan
Rm 101, North Wing Bldg., Batasan Complex
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(02) 8931-5116

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House Bill 6373.pdf
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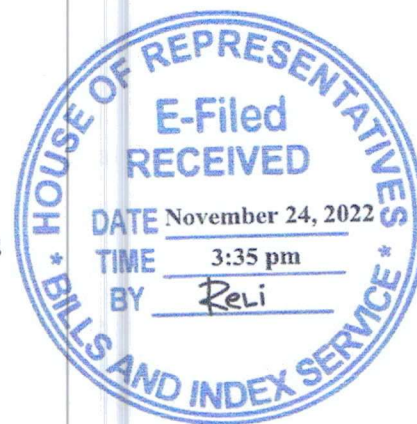
LRs,

P/S review and comment.

Coordinate with Atty Joz

9

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City
NINETEENTH CONGRESS
First Regular Session
HOUSE BILL NO. 6373



Introduced by **REPRESENTATIVE EDWARD S. HAGEDORN**

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.


EDWARD S. HAGEDORN
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



DENR DENRO
PALAWAN RECORDS
RECEIVED
BY: *[Signature]*
DATE: 01-11-2023 23:0155

Letter re: Meeting on 11 January 20

Edward Hagedorn <congedhagedorn04@gmail.com>

To: "director@bmb.gov.ph" <director@bmb.gov.ph>

Cc: EdwardHagedorn@gmail.com, "mimaroparegion@denr.gov.ph" <mimaroparegion@denr.gov.ph>, "penropalawan@denr.gov.ph" <penropalawan@denr.gov.ph>, "cenropuertoprincesa@denr.gov.ph" <cenropuertoprincesa@denr.gov.ph>, janicaalizlim@gmail.com, janicaalizlim@gmail.com

Wed, Jan 11, 2023 at 9:15 AM

Good day!

In addition to the letter of Hon. Edward S. Hagedorn, we are furnishing you the copy of House Bill No. 6373 for your reference.

Thank you very much.

yours truly,

ATTY. ALYZZA MAE S. ORA, R.E.B.

Chief of Staff

Office of Cong. Edward S. Hagedorn
Third Legislative District, Province of Palawan
Rm 101, North Wing Bldg., Batasan Complex
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[Quoted text hidden]

House Bill 6373.pdf
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LRs,

Pls review and comment.

Coordinate with Atty Jaz

9

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

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

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

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

- 30 a. **Arbitral Tribunal Ruling** – refers to the July 12, 2016 ruling rendered
31 by the arbitral tribunal of the Permanent Court of Arbitration in The Hague
32 adjudicating the Philippines' case against China in the West Philippine
33 Sea in accordance with the 1982 UNCLOS;
34
35 b. **Atolls** – refers to a reef with or without an island situated on it surrounded
36 by the open sea, that encloses or nearly encloses a lagoon;
37

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>.

- 38 c. **Buffer Zones** - refers to identified areas outside the boundaries of and
39 immediately adjacent to designated protected areas that need special
40 development control in order to avoid or minimize harm to the protected
41 area;
- 42
- 43 d. **Kalayaan Island Group** – refers to the group of islands and islets located
44 in the West Philippine Sea including the seabed, sub-soil, continental
45 margin and airspace, declared to be subject to the sovereignty of the
46 Philippines under Presidential Decree No. 1596, and was likewise
47 declared as part of the Regime of Islands by Republic Act No. 9522, or
48 *An Act to Define the Baselines of the Territorial Sea of the Philippines*;
- 49
- 50 e. **Marine Protected Area** - refers to identified portions of water set aside
51 by reason of their unique physical and biological significance, managed
52 to enhance biological diversity and protected against destructive human
53 exploitation;
- 54
- 55 f. **National Park** - refers to the lands of the public domain classified as such
56 in the Constitution which include all areas under the NIPAS pursuant to
57 this Act, primarily designated for the conservation of native plants and
58 animals, their associated habitats and cultural diversity;
- 59
- 60 g. **Protected Area** - refers to identified portions of land and/or water set
61 aside by reason of their unique physical and biological diversity and
62 protected against destructive human exploitation;
- 63
- 64 h. **Reefs** - refers to a mass of rock or coral which either reaches close to the
65 sea surface or is exposed at low tide;
- 66
- 67 i. **Scarborough Shoal** - refers to an area located in the West Philippine Sea
68 which was declared part of the Regime of Islands under R.A. No. 9522;
- 69
- 70 j. **Strict Protection Zones (SPZs)** - refers to portions within protected areas
71 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.

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

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

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

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

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

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

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

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

157

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

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

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

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

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

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

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

182 *Approved.*