



Republic of the Philippines
DEPARTMENT OF AGRICULTURE
Office of the Secretary
Elliptical Road, Diliman, Quezon City

23 February 2000

FISHERIES ADMINISTRATIVE)
ORDER NO. 197)
Series of 2000)

SUBJECT: Rules and Regulations governing the lease of public lands for fishpond development.

Pursuant to the provisions of Sections 3, 6, 12, 13, 45, 46, 50, 55, 57, 65 and 107 of Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998, and Section 4 of Republic Act No. 7881, the following rules and regulations governing the lease of public lands for fishpond development purposes are hereby promulgated:

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

- 1.1) **Fishpond Lease** - an agreement entered into by and between the Secretary of Agriculture and qualified fishpond applicant for the use of public land for fishpond development purposes for a period of twenty-five (25) years.
- 1.2) **Permanent improvement** - improvements introduced in the fishpond area which cannot be separated/removed therefrom without causing damage thereto.
- 1.3) **Temporary improvement** - improvements introduced in the fishpond area which can be removed/separated therefrom without causing damage thereto or diminish the usefulness thereof.
- 1.4) **Fishpond** - a land-based facility enclosed with earthen, stone or concrete material to impound water for the growing of fish.
- 1.5) **Fish** - includes not only finfish but also mollusks, crustaceans, echinoderms, marine mammals, and all other species of the aquatic flora and fauna.
- 1.6) **Occupied** - actual or constructive possession over the fishpond area.
- 1.7) **Unoccupied** - not occupied by any person; or is occupied by a person disqualified to acquire or enter upon it, or by a person who, being qualified to occupy or use it, refuses or fails to exercise his preferential right thereto.
- 1.8) **Mangroves/tidal swamps/marshes** - a community of intertidal plants including all species of trees, shrubs, vines and herbs found on coasts, swamps, or border of swamps.

- 1.9) **Foreshore land** - a string of land margining a body of water; the part of a seashore between the low-water line usually at the seaward margin of a low tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm.
- 1.10) **Vegetated with mangrove species** - an intertidal area of one (1) hectare or more with at least ten (10) percent mangrove crown cover in each hectare (i.e., when the sun is directly overhead at high noon, the shadows cast by mangrove species cover at least ten (10) percent of the area).
- 1.11) **Suitable for fishpond purposes** - meeting all accepted criteria on elevation, soil type, soil depth, topography and water supply required for successful fishpond development.
- 1.12) **Undeveloped fishpond area** - areas not enclosed by dikes; or enclosed by dikes without functional water control structures; or those enclosed by dikes with functional water control structures but the water level required for production on a commercial scale cannot be maintained either by high tides or by pumping; or a larger area enclosed only with a simple perimeter dike which has not been subdivided, which may or may not be vegetated with mangrove species and is not producing on a commercial scale.
- 1.13) **Developed fishpond** - area are enclosed by dikes with functional water control structures not vegetated with mangrove species and producing on a commercial scale; but not a fully developed fishpond.
- 1.14) **Fully developed fishpond** - a clean, leveled area enclosed with dikes at least one foot higher than the highest flood water level in the locality and strong enough to resist water pressure at the highest flood tide; consists of at least a nursery pond, a transition pond, a rearing pond, or a combination of any or all of said classes of ponds and a functional water control system and producing in a commercial scale.
- 1.15) **Commercial-scale producing fishpond** - a fully developed fishpond producing not less than 1000 kilograms of fish per hectare per year.
- 1.16) **Person** - natural or juridical entities such as individuals, associations, partnerships, cooperatives or corporations.
- 1.17) **Fisherfolk** - people directly or personally and physically engaged in taking and/or culturing and processing fishery and/or aquatic resources.
- 1.18) **Fisherfolk cooperative** - a duly registered association of fisherfolk with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contribution to the capital requirement and accepting a fair share of the risks and benefits of the undertakings in accordance with universally accepted cooperative principles.
- 1.19) **Fisherfolk organization** - an organized group, association, federation, alliance or an institution of fisherfolk which has at least fifteen (15) members, a set of officers, a constitution and by-laws, an organizational structure and a program of action.
- 1.20) **Small and medium enterprise** – any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business

entity's office, plant and equipment are situated, must have value falling under the following categories:

Micro	:	less than	P 1,500,001
Small	:	P 1,500,001 - P15,000,000	
Medium	:	P15,000,001 - P60,000,000	

- 1.21) **Environmental Compliance Certificate** – a permit issued by the President or his duly authorized representative certifying that the new fishpond development will not bring about unacceptable environmental impact and that the proponent has complied with the requirements of EIS system.
- 1.22) **Department** – Department of Agriculture.
- 1.23) **Secretary** - Secretary of Agriculture
- 1.24) **Bureau** – Bureau of Fisheries and Aquatic Resources.
- 1.25) **Director** - Director of Fisheries and Aquatic Resources.
- 1.26) **Regional Office** - BFAR Regional Office.
- 1.27) **Regional Director** - BFAR Regional Director.
- 1.28) **Authorized representatives** - include the BFAR Regional Director or other officials of the regional office designated by the Regional Director and other officials and employees of the BFAR or the Office of the Secretary duly designated by the Director or the Secretary.
- 1.29) **Resource rent** - the difference between the value of the products produced from harvesting a publicly owned resource less the cost of producing it, where cost includes the normal return to capital and normal return to labor.

SECTION 2. Lease of public lands for fishpond development.- A Fishpond Lease Agreement (FLA) must be secured by a person who shall occupy or use any portion of the public lands declared by the Secretary of Environment and Natural Resources as available for fishpond purposes and released to the Bureau for its management and disposition in accordance with the provisions of this Order.

SECTION 3. Persons who may apply for lease. - The following persons may apply for fishpond lease:

- a) Citizens of the Philippines who are at least twenty-one years of age;
- b) Corporations duly incorporated and registered under the laws of the Philippines at least sixty per centum (60%) of the capital stock or interest of which belongs to citizens of the Philippines; and
- c) Fisherfolk cooperatives/associations and small and medium enterprises duly organized or registered under the laws of the Philippines.

SECTION 4. Preference in the disposition of Public Lands for fishpond purposes. - Upon the effectivity of Republic Act No. 8550, FLAs may be issued for public lands that may be declared available for fishpond development primarily to qualified fisherfolk cooperatives/associations. *Provided*, however, that in cases of existing FLAs, the current lessees shall be given priority upon its expiration and shall be entitled to an extension of another twenty-five (25) years in the utilization of their respective leased areas.

Thereafter, such FLAs shall be granted to any Filipino Citizen with preference primarily to qualified fisherfolk cooperatives/associations as well as small and medium enterprises as defined under Republic Act No. 8289.

SECTION 5. Size of fishpond. - The area of fishpond to be leased shall be governed by the following:

- a) An individual may be allowed to lease an area of not exceeding fifty (50) hectares;
- b) Husband and wife living together may be granted an aggregate area not exceeding fifty (50) hectares: *Provided*, however, that husband and wife living separately by virtue of a decree of legal separation may apply for an area not exceeding fifty (50) hectares each;
- c) A corporation, association or cooperative may be granted an area not exceeding two hundred fifty (250) hectares;
- d) Any branch of the government, person or association who will engage in fishpond development for scientific, research or educational purposes may be granted an area of not exceeding ten (10) hectares through a gratuitous permit.

SECTION 6. Period of lease. - The lease shall be for a period of twenty-five (25) years, renewable for another twenty-five (25) years subject to Sec. 4 of this Order, the terms and conditions of the lease and other existing fishery laws, rules and regulations.

SECTION 7. Preemptive rights of heirs. - In case of the death of the lessee, his spouse and/or children as legal heirs, provided they are qualified, shall have preemptive rights to the unexpired term of his Fishpond Lease Agreement, upon filing of a fishpond application within ninety (90) days from the death of the lessee subject to the same terms and conditions as originally provided therein.

SECTION 8. Initial requirements in the filing of fishpond application. - The initial requirements for the filing of fishpond lease application are as follows:

- a) Four (4) copies of the sketch plan of the area released for fishpond purposes with its technical description as extracted from the Land Classification Map of the Forest Management Bureau;
- b) In case the area applied for fishpond development is within the alienable and disposable land under the jurisdiction of the Land Management Bureau, the comment of that Office must first be secured to the effect that it interposes no objection to the issuance of a fishpond lease over the area;
- c) In case of a juridical person, two (2) certified true copies of Articles of Incorporation or Association duly approved by government agencies concerned, the primary purpose of which is to engage in fishpond development;
- d) Certificate of bank deposit issued by any Banking Institution showing that the applicant has an initial capital in cash of P10,000.00 per hectare or fraction thereof and/or its equivalent assets;
- e) An affidavit declaring that the initial capital deposited in the Bank shall be used exclusively for the development of the area; and

- f) Certification from the DENR that the area is available for fishpond development.

SECTION 9. Application fee. - A non-refundable application fee of One Thousand (P1,000.00) pesos shall be paid to the Bureau or its Regional Offices upon filing of the application which shall be remitted to the National Fisheries Research and Development Institute (NFRDI).

SECTION 10. When application is considered filed. - An application for lease shall be considered filed on the date and time the original thereof is actually received in the Bureau or its Regional Offices where the area is located. Applications with incomplete initial requirements shall not be processed.

SECTION 11. Priority right of application. - In determining the priority of applications, the following rules shall be observed:

- a) When two or more applications are filed for the same area which is unoccupied or unimproved, the first applicant shall have the right of preference thereto.
- b) Between an applicant for and a bona fide occupant of an area available for fishpond purposes, the latter shall have the right of preference to the said area, in which case, the actual occupant if qualified shall be advised by the Director to file a fishpond application within thirty (30) days from his receipt of a notice to that effect. If the occupant is not qualified under the law to apply for the land, or loses his rights for failure or refusal to present his fishpond application within the time granted above, he shall be required to vacate the premises.
- c) If two or more applications are filed for the same area on the same date, the applicant who can best meet the requirements of the fisheries laws and regulations based on financial capacity and/or qualification shall have the right of preference thereto.

SECTION 12. Final requirements for the issuance of a lease. - A fishpond lease may be issued in favor of an applicant upon submission of the following:

- a) Twelve (12) copies of the survey plan of the area duly approved by the Director of Lands or Regional Director of Lands, or if under cadastral survey, the same shall be certified by the Bureau of Lands;
- b) Duly accomplished fishpond lease contract form duly acknowledged before a Notary Public;
- c) Certifications issued by the BFAR Regional Director and the Regional Trial Court in the judicial district where the area applied for is located to the effect that the same is not involved in any pending administrative and judicial case, respectively;
- d) Payment of cash bond deposit and initial rental;
- e) Certification issued by the BFAR Regional Director to the effect that the area applied for is not subleased to any other person/s; and
- f) Environmental Compliance Certificate from the DENR.

SECTION 13. Terms and conditions of the fishpond lease. -

- a) The fishpond area covered by the lease shall be confined within the perimeter of the parcel of land described therein and shall be utilized by the LESSEE for fishpond purposes only.
- b) The area subject of the lease is public land to the best knowledge and belief of the parties therein, and accordingly, the LESSOR shall not be responsible for any loss occasioned by legal award of the area to any claimant recognized by the Courts.
- c) The fishpond covered by the lease shall be so constructed as not to interfere with the free navigation of any stream, river, migration paths, lakes or bays flowing through or adjoining the fishpens, fish cages, fish traps and fishponds or to impede the flow and ebb of the tide to and from the area. Any construction made in violation hereof shall be removed upon order of the Department, thru BFAR, in coordination with the other government agencies concerned at the expense of the LESSEE, or occupants thereof, whenever applicable.
- d) Annual rentals shall be set at levels that reflect resource rent accruing from the utilization of resources and shall be determined by the Department thru BFAR. Failure to pay the annual rentals on the date the same are due shall subject the LESSEE to the corresponding surcharges as provided for in the regulations. For failure to pay the annual rentals and surcharges for two (2) consecutive years without justifiable cause, the lease shall be cancelled or terminated, and the bond therein forfeited in favor of the government without prejudice to any action the government may take to recover rentals due including surcharges.
- e) The LESSEE must introduce improvements in the area within One Hundred Eighty (180) Days from the date of issuance of the lease, otherwise the same shall be cancelled. The area leased shall be developed and producing on a commercial scale within three (3) years from the approval of the FLA; *Provided*, however, that all areas not fully producing within five (5) years from the date of approval of the lease shall automatically revert to the public domain for reforestation.
- f) The leasehold rights of the LESSEE may be transferred covering all or any portion of the fishpond area herein granted to another party subject to the prior written approval of the LESSOR, provided that the duration of the lease shall be for the unexpired period of the original lease.
- g) The leasehold rights of the LESSEE may be assigned to any financial institution to secure a loan for the development of the area covered by the lease subject to the prior written approval of the LESSOR.
- h) The LESSEE is prohibited to sublease all or any portion of the area covered by the lease through any form of arrangement that partakes the nature of a sub-lease.
- i) The LESSEE shall undertake reforestation in river banks, bays, streams and seashore fronting the dike of his fishpond to at least fifty (50) meters strip whenever applicable in consideration of such area/s, topography elevation and water depth and subject to future rules that may be promulgated thereon by the DENR.

- j) The LESSEE shall provide facilities that will minimize environmental pollution, i.e., settling ponds, reservoirs: *Provided*, that failure to comply with this provision shall mean cancellation of FLA.
- k) Upon cancellation of the lease for cause, the ejectment of the LESSEE and/or occupants from the area shall be ordered by the LESSOR or his authorized representative. Failure to vacate the area shall subject the LESSEE and/or occupants thereof to applicable provisions of laws, rules and regulations thereon, and all existing improvements shall be forfeited in favor of the government subject to the rights of the assignee-bank, if applicable as provided in Section No. 13, paragraph (g) of this Order.
- l) When applicable, in the event of default in the payment of the loan by the LESSEE and the assignee-bank enforces the terms and conditions of the assignment of rights, the said assignee-bank shall have a period of five (5) years thereafter to hold the area covered by the lease for the purpose of liquidating the debt, disposing of the improvements therein, and negotiating for the transfer of assignment of the rights therein to other qualified transferees who shall comply with the requirements of the LESSOR. For this purpose, the assignee-bank shall notify the LESSOR when such enforcement will commence. However, if after the period of five (5) years has lapsed and no transfer of rights has been effected, then the area shall be automatically reverted to the LESSOR for proper disposition, subject to the rights of the assignee bank.
- m) The LESSEE shall keep a record of operations and transaction of the fishpond, which record shall be audited by an independent auditor, commissioned by the LESSEE.
- n) The LESSEE shall allow the duly authorized representative of the LESSOR to inspect and validate all the records required in the operations of the fishpond.
- o) The lease shall be subject to the existing laws, rules and regulations on the matter.

SECTION 14. Rentals, when due and payable. - Upon the effectivity of this Order, the annual rentals shall be at the rate prescribed below:

First year, starting from January 1, 2000 until December 31, 2000, the annual rental shall be at the rate of Five Hundred pesos (P500.00) per hectare or a fraction thereof; for the second year, the annual rental shall be at the rate of Six Hundred pesos (P600.00) per hectare or a fraction thereof; for the third year, the annual rental shall be at the rate of Seven Hundred pesos (P700.00) per hectare or a fraction thereof; for the fourth year, the annual rental shall be at the rate of Eight Hundred pesos (P800.00) per hectare or a fraction thereof; and for the fifth year, the annual rental shall be at the rate of One Thousand Pesos (P1,000.00) per hectare or a fraction thereof and then yearly thereafter. The rental must be paid not later than the last working day of the month of January of each year: *Provided*, however, that the BFAR shall conduct a study on resource rent of public lands for fishpond development. The result of this study shall then be the basis for the rates of rentals for fishpond areas.

SECTION 15. Surcharges for default of payment of rentals. - Non-payment of annual rental when it becomes due and payable shall be subject to a surcharge in accordance with the following schedules:

Rentals paid from February 1 to March 31	10%
Rental paid from April 1 to June 30	15%
Rental paid from July 1 to September 30	20%
Rental paid from October 1 to December 31	25%
Rental paid after one (1) year	40%

SECTION 16. Cash Bond Deposit. - Before a lease is issued, the applicant shall, as a guaranty of good faith in filing the application and for the satisfactory compliance with the existing fishery laws, rules and regulations promulgated thereunder and of the terms and conditions of the lease, be required to deposit a cash bond with the Bureau or its Regional Offices. The cash bond shall be at the rate of One Hundred (P100.00) pesos per hectare or fraction thereof: *Provided*, however, that after five (5) years and the LESSEE shall have fully developed the area and made producing in commercial scale and has satisfactorily complied with all the requirements and the terms and conditions of the lease, the Director, may credit same for payment of annual rentals.

SECTION 17. Incentives. - Fishpond Lease Agreement holders are mandated to execute within six (6) months from the effectivity of the Order, an incentive plan with their regular fishpond or prawn farm workers or fishpond or prawn farm workers' organization, if any, whereby seven point five percent (7.5%) of their net profit before tax from the operation of the fishpond or prawn farms are distributed within sixty (60) days at the end of the fiscal year as compensation to regular and other pond workers in such ponds over and above the compensation they currently receive.

In order to safeguard the rights of the regular fishpond or prawn farm workers under the incentive plan, the books of the fishpond or prawn farm owners shall be subject to periodic audit or inspection by certified public accountants chosen by the workers.

SECTION 18. Annual report on fishpond development, operation and production. - Within ten (10) days after six (6) months from the approval of the lease and every one (1) year thereafter, the LESSEE shall submit to the Director through the Regional Director concerned, an annual report under oath relative to the fishpond development, operation and production, including the species and volume thereof, for statistical and evaluation purposes. Said report shall be in a prescribed form duly verified and certified to by the Regional Director concerned or his duly authorized representative.

SECTION 19. Grounds for the rejection of application for lease. - An application for lease shall be rejected on any of the following grounds:

- a) Lack/loss of interest of the applicant;
- b) Applicant is not qualified;
- c) Failure to comply with any of the requirements of Section 11 of this Order within sixty (60) days from the receipt of Notice of Compliance;
- d) Death of the individual applicant;

- e) Dissolution of juridical person;
- f) Fraudulent, false or misleading statements or information in the application;
- g) Occupying or introducing improvements in the area applied for without a fishpond lease agreement; and
- h) When public interest so requires.

SECTION 20. Conditions on assignment/transfer of leasehold rights and interests. - The assignment/transfer may be allowed under the following conditions:

- a) The assignor/transferor has held the lease for a period of not less than three (3) years from the approval thereof;
- b) The area subject of the proposed assignment/transfer has been developed and producing in commercial scale, except when the area has been abandoned by the lessee-assignor due to the enforcement of the assignment by the assignee-bank;
- c) The assignor/transferor has not violated any provisions of the fishery laws, rules and regulations relative to fishpond development including the terms and conditions of the lease;
- d) The assignee/transferee is qualified to hold the lease pursuant to the provisions of this Order;
- e) The area subject of the assignment/transfer is not involved in any administrative or judicial case; and
- f) The transferee shall enjoy only the privilege to hold the lease for the unexpired period thereof and shall assume the obligations of the transferor relative to the said lease.

SECTION 21. Requirements on assignment/transfer of leasehold rights. - The assignee/transferee shall submit the following requirements;

- a) An application form duly accomplished;
- b) Original/duplicate copy of the Deed of Assignment/Transfer of Leasehold Rights and Interests and Assumption of Obligations;
- c) Certified true copies of original official receipts of updated payment of rentals;
- d) Payment of assignment/transfer fee in the amount of ten (P10) pesos per hectare or fraction thereof, but in no case shall it be less than One Hundred (P100.00) pesos;
- e) Payment of application fee of P1,000.00;
- f) Posting of required cash bond deposit;
- g) Latest report of improvements duly inspected and verified by the Regional Director or his duly authorized representative;

- h) Twelve (12) copies of the survey plan of the area under his/her name duly approved by the Director of Lands or Regional Director of Lands.
- i) Fishpond lease contract form duly accomplished and acknowledged before a Notary Public;
- j) Certification issued by the BFAR Regional Director and Regional Trial Court in the judicial district where the area applied for is located to the effect that the same is not involved in any pending administrative and judicial case, respectively; and
- k) Affidavit and certification executed and issued by the applicant and BFAR Regional Director respectively, to the effect that the area applied for is not subleased to any person/s.

SECTION 22. Grounds for cancellation/termination of lease. - A lease shall be cancelled or terminated on any of the following grounds:

- a) Violation of existing fishery laws, rules and regulations and other applicable laws;
- b) Death of the lessee, subject to the rights of legal heirs under Section 7 of this Order;
- c) Dissolution of juridical person;
- d) Fraudulent, false or misleading statements or information in the application and/or other documents submitted prior to or after the issuance of the lease;
- e) Failure to submit the yearly reports;
- f) Failure to pay the rentals and surcharges for two (2) consecutive years;
- g) Development of the area other than for fishpond purposes;
- h) Failure to comply with the rules and regulations, terms and conditions of the lease;
- i) Sublease of the area or any portion thereof;
- j) LESSEE has acquired citizenship in another country during the existence of the FLA; and
- k) Failure of the LESSEE to provide facilities that will minimize environmental pollution, i.e., settling ponds, reservoirs.

SECTION 23. Disposition of improvements. - When the lease had been cancelled or terminated and the leasehold rights therein had not been assigned to any government financing institution the existing improvements on the area subject of said lease shall be considered automatically forfeited in favor of the government which shall be disposed of by the Bureau pursuant to applicable laws, rules and regulations on the matter.

SECTION 24. Abandoned, undeveloped or underutilized fishponds. - Fishpond areas covered by an existing FLA which have been determined jointly by DA, DENR and LGUs concerned as abandoned, undeveloped or underutilized portions after five (5) years

from the issuance of the FLA, can be reverted to their original mangrove state and that necessary steps should be made to restore such areas to their original mangrove state.

SECTION 25. Unlawful use or occupation of public lands released for fishpond purposes. -

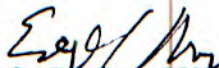
- a) Any person illegally occupying or introducing improvements in areas released for fishpond development without a lease, prior to the effectivity of this Order, shall be penalized through forfeiture of all the improvements introduced thereon in favor of the government and shall vacate the area immediately. Provided, however, that if the person occupying the said area is an applicant, he shall be charged double the ordinary rental charges.
- b) Upon failure or refusal to pay the charges herein mentioned, the said applicant shall be liable for prosecution and upon conviction shall suffer the penalty which is a fine of from Five Thousand (P5,000.00) pesos or imprisonment from six (6) months to four (4) years or both such fine and imprisonment in the discretion of the Court.

SECTION 26. Administrative and Court Action. -


- a) The Secretary, the Director or their duly authorized representative may take action either administrative or judicial, as may be necessary and proper to carry into effect the provisions of this Order.
- b) Adverse Claim or Protest.- Any person who has an adverse claim or protest over the area which is the subject of applications for a twenty-five (25) year fishpond lease agreement shall file his claim or protest with the Bureau within thirty (30) days from knowledge thereof, otherwise such claim or protest shall not be entertained.


SECTION 27. Repealing clause. - Fisheries Administrative Order No. 60, as amended, Fisheries Administrative Order No. 125 and existing fishery rules and regulations which are inconsistent with the provisions of this Order are hereby repealed or modified accordingly.

SECTION 28. Effectivity. - This Administrative Order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation.


EDGARDO J. ANGARA
Secretary

RECOMMENDED BY:


MALCOLM I. SARMIENTO, JR.
Director
Bureau of Fisheries and Aquatic Resources


CESAR M. DRILON, JR.
Undersecretary for Fisheries and
Legislative Relations