



Republic of the Philippines
Department of Agriculture
BUREAU OF FISHERIES AND AQUATIC RESOURCES
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HR

December 8, 2017

Memorandum to:

All Regional Directors

All Provincial Fisheries Officers

Legal Division

This Bureau

Attached is a copy of Fisheries General Memorandum Order No. 2017-001, series of 2017, entitled: "Clarification of Applicability of Section 42 of Fisheries Administrative Order No. 197-1."

For your information and guidance.

SAMMY A. MALVAS

OIC, Office of the Assistant Director
for Administrative Services



Republic of the Philippines
DEPARTMENT OF AGRICULTURE
BUREAU OF FISHERIE AND AQUATIC RESOURCES
Elliptical Road, Diliman, Quezon City 1100

FISHERIES GENERAL MEMORANDUM
ORDER NO. 2017-001
SERIES OF 2017

**SUBJECT: Clarification of Applicability of Section 42 of Fisheries
Administrative Order No. 197-1**

The express repeal by FAO No. 197-1 of Fisheries Administrative Order Nos. 60, 125 and 197, gave rise to several issues regarding the implementation of FAO No. 197-1, particularly, those FLA applications and cases filed prior to the effectivity of FAO No. 197-1, which are still pending to date.

Therefore, to properly address these issues by reflecting the true intent of the Order and harmonizing it with its predecessors, it is hereby ordered that any pending application for lease or renewal thereof filed before the effectivity of FAO No. 197-1 shall be governed by FAO 197 subject to the condition that it shall only be for a maximum period of two terms; and that pending Protests filed before the effectivity of FAO No. 197-1 shall be governed by FAO No. 60, as amended by FAO No. 125.


EDUARDO B. GONGONA
Director



Republic of the Philippines
Department of Agriculture
OFFICE OF THE SECRETARY
Elliptical Road, Diliman
Quezon City 1100, Philippines

OFFICE OF THE DIRECTOR

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MEMORANDUM FOR THE SECRETARY

FOR : DENNIS M. GUERRERO
Chief of Staff

CC : EMERSON U. PALAD
Undersecretary for Operations

ASIS G. PEREZ
Director, BFAR

ANNALIZA B.A. VITUG
OIC, FRQD, BFAR

FROM : ATTY. VERO B. LIBROJO
Chief, Legal Division

SUBJECT : PROPOSED AMENDMENT TO FAO 197-1

Fisheries Administrative Order (FAO) 197 and FAO 125, among others, were expressly repealed by FAO 197-1 when it took effect on 05 January 2013.

The express repeal of the aforementioned FAOs gave rise to several issues regarding the implementation of FAO 197-1, to wit:

1. Previously, Section 25 of FAO 197 provided:
 - a) Any person illegally occupying or introducing improvements in an area released for fishpond 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, 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 charged herein mentioned, the said applicant shall be liable for prosecution and upon conviction shall suffer the penalty which is fine xxx or imprisonment xxx or both such fine and imprisonment in the discretion of the Court." (Emphasis ours)

On the other hand, Section 37 of FAO 197-1 now states: "(a)ny person illegally occupying or introducing improvements in areas released for fishpond development without a permit, contract or lease, shall be liable for prosecution for the offense of mangrove conversion, without



prejudice to the filing of other administrative or criminal charges.”
(Emphasis ours)

This incongruence has given rise to a conundrum on how occupants with pending FLA applications filed prior to the effectivity of FAO 197-1 on January 5, 2013 but remains pending to date after said effectivity date shall be dealt with. During previous meetings, BFAR posited that these occupants have already acquired “*vested rights*” when they filed their FLA applications prior to the effectivity of FAO 197-1 and therefore should not be subject to prosecution. However, given the manner by which Section 37 is presently couched and considering further that FAO 197 has been expressly repealed, statutory construction dictates that these occupants should now be subject to prosecution. It bears stressing that an FLA application is not tantamount to a permit, contract or lease.

2. Section 10 of FAO 125 on Adverse claim or protest provided: “Any person who has an adverse claim or protest over the area which is the subject of an application for conversion shall file the claim or protest with the Bureau of Fisheries and Aquatic Resources within two (2) months from the effectivity of this Order and after which no claim, protest or complaint shall be entertained.” (Emphasis ours.)

There is no provision in FAO 197 governing adverse claim or protest.

However, Section 40 of FAO 197-1 states: “Any person who has an adverse claim or protest over the area which is the subject of an application for an ASC or FLA shall file the claim or protest with the Bureau within thirty (30) days from knowledge thereof, otherwise such claim or protest shall not be entertained.” (Emphasis ours.)

Prescinding from the above, pending claims or protest after the effectivity of FAO 197-1 should be dismissed if not filed within the two (2) months prior to the effectivity of FAO 125. However, since FAO 125 has already been repealed, these pending claims or protest should now be reckoned thirty (30) days from knowledge thereof despite the possibility that the same could have been filed after two (2) months from the effectivity of FAO 125. FAO 197-1 has unreasonably vested to certain protestants and adverse claimants a longer period of prescription for their action, to the prejudice of the applicants and claimants.

Wherefore, to properly address these issues by reflecting the true intent of the Order and harmonizing it with its predecessors, it is hereby proposed that a proviso be appended to **Section 42 Repealing Clause**. Thus:

“xxx, *Provided*, that any pending application for a lease or renewal thereof filed before the effectivity of this Order shall be governed by FAO 197 subject to the condition that it shall only be for a maximum period of two terms; *Provided further*, that pending protests filed before the effectivity of this Order shall be governed by FAO 60, as amended by FAO 125.

For your consideration.