

**[BFAR FISHERIES ADMINISTRATIVE ORDER NO.
197-1, December 17, 2012]**

**REVISED RULES AND REGULATIONS GOVERNING THE LEASE OF
PUBLIC LANDS FOR FISHPOND AND MANGROVE-FRIENDLY
AQUACULTURE**

Pursuant to Section 16, Article II of the 1987 Constitution, Sections 3, 6, 12, 13, 45, 46, 50, 55, 57, 65, 103 (b) and 107 of Republic Act 8550, Republic Act 8289 as amended by Republic Act 9501 and Executive Order 26 series of 2011, the following rules and regulations governing the lease of public lands for fishpond and mangrove-friendly aquaculture are hereby promulgated for the guidance of all concerned.

I. WORDS AND TERMS DEFINED

SECTION 1. Definitions - For purposes of this Order, the words and terms herein shall be construed as follows:

1.1 Abandoned fishpond – refers to public land released for fishpond development where there is no occupation, possession or operational activity by the lessee or any of his or her lawful representative as manifested by any of, but not limited to, the following conditions: (1) failure by the lessee to submit to the Bureau within ten (10) days after six months from the approval of the lease the required initial report under oath relative to the fishpond development, operation and production, duly verified by the concerned Regional Director or his or her authorized representative; (2) subleasing, or, (3) where there is absence of clear indication of fish production operations in the area;

1.2 Aquasilviculture Stewardship Contract (ASC) – a contract entered into by and between the Secretary and qualified fisherfolk cooperatives/associations and micro, small and medium enterprises for the use of public land for mangrove-friendly aquaculture;

1.3 Areas released for fishpond development – portions of public land transferred by the DENR to the Bureau for fishpond development by virtue of the following: (a) certifications issued by the Director of the Bureau of Forest Development (BFD) now the Forest Management Bureau (FMB), for releases made prior to the issuance of Presidential Decree 705; (b) BFD/FMB Administrative Orders; and, (c) individual releases of alienable and disposable areas under the Bureau of Lands, now the Land Management Bureau, made prior to the effectivity of Republic Act 8550;

1.4 Authorized representatives – include personnel of the Bureau or Department duly authorized by the Regional Director, the Director, the Undersecretary for Fisheries or the Secretary as the case may be;

1.5 Bureau – Bureau of Fisheries and Aquatic Resources.

1.6 Commercial-scale production – aquaculture production of fish in the required volume or its equivalent per hectare per year;

1.7 Department – Department of Agriculture;

1.8 DENR- Department of Environment and Natural Resources;

1.9 Developed fishpond – refers to public land released for fishpond development where the area is enclosed by dikes with functional water control structures and not vegetated with mangrove species.

1.10 Director – Director of the Bureau;

1.11 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 Presidential Decree 1586 and its implementing rules and regulations;

1.12 Fish – includes not only finfish but also mollusks, crustaceans, echinoderms, marine mammals, and all other species of the aquatic flora and fauna and/or aquatic resources;

1.13 Fisherfolk – people directly or personally and physically engaged in taking and/or culturing and processing fishery and/or aquatic resources;

1.4 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;

1.5 Fisherfolk organization – an organized group, association, federation, alliance or an institution of fisherfolk which at least fifteen (15) members, a set of officers, a constitution and by-laws, an organizational structure and a program of action;

1.6 Fishpond – a land-based facility enclosed with earthen, stone or concrete material to impound water for the growing of fish;

1.7 Fishpond Lease Agreement (FLA) – an agreement entered into by and between the Secretary and a qualified applicant for the use of developed public fishpond areas;

1.8 Foreshore land – a string of land margining a body of water, the part of a seashore between the low-water line usually at 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;

1.9 Fully developed fishpond – refers to public land released for fishpond development where the area is clean, leveled and 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, and 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;

1.20 Mangroves/tidal swamps/marshes – a community of intertidal plants including all species of trees, shrubs, vines and herbs found on coasts, swamps, or border or swamps;

1.21 Mangrove-friendly aquaculture – aquaculture method having minimal adverse impact on the mangrove environment, which may include but is not limited to culture of fish in pens, ponds or rafts integrated with mangrove trees inside the forest itself (aquasilviculture) or harvesting/gleaning of fishery or aquatic resources inside the mangrove forest (silvofisheries);

1.22 MFARMC – Municipal Fisheries and Aquatic Resources Management Council;

1.23 Micro, Small and Medium Enterprise (MSME) – 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: not more than P3,000,000

small: P3,000,001-15,000,000

medium: P15,000,001 – P1,000,000,000

which value is subject to review and adjustments by the Micro, Small and Medium Enterprises Development (MSMED) Council;

1.24 Occupied – actual or constructive possession over the fishpond area;

1.25 Permanent improvement – improvement introduced in the fishpond area which cannot be separated/removed therefrom without causing damage thereto;

1.26 Person – natural or juridical entities such as individuals, associations, partnerships, cooperatives or corporations;

1.27 Regional Director – Regional Director of the Bureau;

1.28 Regional Office – Regional Office of the Bureau;

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;

1.30 Secretary – Secretary of the Department of Agriculture;

1.31 Suitable for fishpond purposes – meeting all accepted criteria on elevation, soil type, soil depth, topography and water supply required for successful fishpond development;

1.32 Temporary Improvement – improvement introduced in the fishpond area which can be removed/separated therefrom without causing damage thereto or diminish the usefulness thereof;

1.33 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;

1.34 Underutilized fishpond – refers to public land released for fishpond development where the fishpond area or portion thereof is not producing in commercial scale within three (3) years from the approval of the ASC or FLA, or not fully developed and producing in commercial scale within five (5) years as reflected in either (1) the submitted annual report on fishpond development, operation and production, under oath by the ASC holder or lessee and duly verified by the concerned Regional Office; or (2) as deduced from the information supplied in the Reports on Inspection and Verification, submitted by authorized representatives and duly endorsed by the Regional Director concerned, evidencing that such portion or the whole fishpond area is not producing on a commercial scale;

1.35 Undeveloped fishpond area – refers to public land released for fishpond development where the fishpond area is not enclosed by dikes; or enclosed by dikes but without functional water control structures; or 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;

1.36 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.

II. PERMITS, CONTRACT AND LEASES

SECTION 2. Use of areas released for fishpond development - No person shall occupy or use any portion of areas released for fishpond development as defined, without first securing a permit, contract or lease in accordance with the provisions of this Order.

SECTION 3. Permits, Contracts and Leases –

a. Gratuitous Permit – A Gratuitous Permit (GP) for portions of areas released for fishpond development may be granted by the Secretary upon the recommendation of the Director to any branch of government, academic, scientific or research institution, for scientific, research, educational or experimental breeding purposes.

b. Stewardship Contract – An Aquaculture Stewardship Contract (ASC) may be granted for mangrove-friendly aquaculture by the Secretary upon the recommendation of the Director to fisherfolk cooperative or association as well as MSME over areas released for fishpond development.

c. Lease Agreement – A Fishpond Lease Agreement (FLA) for fishpond operations may be granted by the Secretary upon the recommendation of the Director to qualified applicants over areas released for fishpond development that have already been developed into fishponds.

SECTION 4. Area that may be granted –

a. An area not exceeding fifty (50) hectares may be granted to a fisherfolk cooperative/association or MSME through an ASC;

b. An area not exceeding twenty-five (25) hectares may be granted to an individual or husband and wife living together through an FLA. A person who is already a holder of FLA over an area as provided herein shall be precluded from acquiring any right or interest in another permit, contract or lease issued or granted to any

corporation, association or partnership, even if his interest is that of a stockholder or member thereof;

c. An area not exceeding twenty-five (25) hectares subject to availability, may be granted through a gratuitous permit, to any branch of the government, academic, scientific or research institution that will engage in aquaculture for scientific, research, educational or experimental breeding purposes;

d. An area not exceeding fifty (50) hectares may be granted through an FLA to a corporation duly registered with the Securities and Exchange Commission;

e. The provisions of the preceding paragraphs notwithstanding, the Secretary may, in his discretion, increase the area that may be granted for reason of public interest, taking into consideration the financial capacity and/or qualification of the applicant and the importance of the project or industry for which the area is to be used.

SECTION 5. Persons who may apply for lease –

A. The following persons shall have preference in applying for an Aquasilviculture Stewardship Contract (ASC):

a. Fisherfolk cooperative/association organized or registered under the laws of the Philippines, provided that:

1. at least fifty (50) percent of its members are registered voters of the municipality where the fishpond area being applied for is located;
2. the cooperative/association has secured endorsement from the MFARMC;
3. the cooperative/association has financial capability and an existing financial management system;
4. the cooperative/association has been existing for at least one (1) year; and
5. the technical staff of the cooperative/association has executed an affidavit stating willingness to undergo training on and to engage in mangrove-friendly aquaculture.

(b) MSMEs duly organized or registered under the laws of the Philippines, provided that:

1. the principal or proprietor and at least fifty (50) percent of the paid workers are registered voters of the province where the fishpond area being applied for is located;
2. they present a duly audited and notarized financial statement;
3. they have been endorsed by the MFARMC; and
4. the technical staff of the MSME has executed an affidavit stating willingness to undergo training on and to engage in mangrove-friendly aquaculture.

B. In the absence or non-qualification of fisherfolk cooperative/association or MSME applicants, a citizen of the Philippines may apply for ASC provided, he or she is at least twenty-one years of age, a registered voter of the province where the fishpond area being applied for is located, has secured endorsement from the MFARMC and has executed an affidavit expressing his or her willingness to undergo training on and to engage in mangrove-friendly aquaculture.

C. The following persons may apply for FLA over developed public fishpond areas;