

Oceana's Position Paper on HB Bill 7853 on Expanding the Area of Operations of Small-scale and Medium-Scale Commercial Fishing Vessels within Municipal Waters

*"Subsistence fisheries exist throughout the world and essentially consist of coastal people catching fish or gathering invertebrates in shallow waters or intertidal areas for their own and their family's consumption, or for bartering against other goods. Only a few countries or territories monitor and report on their subsistence fisheries, Alaska being one of the positive exceptions. However, despite near universal official neglect, subsistence fisheries are extremely important to the food security of numerous countries, particularly small island developing states (SIDS) in the Pacific and Indian Ocean (Chapman, 1987; Hauzer et al., 2013)."*¹

Oceana respectfully submits this Position Paper on House Bill 7853, on the further amendment of the Fisheries Code of 1998, to expand the area of operations of small-scale and medium-scale commercial fishing vessels within municipal waters. House Bill 7853 proposes to amend Section 18 of the amended Fisheries Code (RA 8550 as amended by RA 10654) to allow small-scale and medium-scale commercial fishing vessels to operate in municipalities with municipal waters less than 10.1 kilometers.

We oppose this amendment for the following reasons:

1. Allowing commercial fishing within municipal waters will worsen overfishing and its dire impacts to our fisheries and food security.

Municipal waters have a nature-imposed limit or cap in fish catch. Recent studies show that 70% of Philippine waters are now overfished². Despite the continued expansion of commercial fishing fleets, total catch has leveled off in the early 1990s. The maximum economic yield for demersal fish stocks (groupers and snappers etc.) has already been reached as early as the late 1960s. Small pelagic fisheries (scads, sardines) indicate declining fish catch per unit effort due to overfishing.

Moreover, changes in species composition have been observed in many fishing grounds: anchovies have replaced sardines, more squid are being caught than fish,

¹ Palomares, M.L. and Daniel Pauly, Coastal Fisheries: The Past, Present, and Possible Futures. Institute for the Oceans and Fisheries, University of British Columbia, Vancouver, BC, Canada, 2019.

² Aguirre, N. (2019, July 05). USAID: 70% of Philippine fishing grounds overfished. *Sunstar*.
<https://www.sunstar.com.ph/article/1812928/ILOILO/Local-News/USAid-70-of-Philippine-fishing-grounds-overfished>

and many more³. Because of this race to catch more fish, commercial fishing operations are in search for more fishing grounds.⁴ The latest trend for the volume of fisheries production both for commercial and municipal fisheries is declining (Fig. 1). A recent catch reconstruction study for the Philippines revealed that catches in inshore fishing areas have been decreasing⁵. Allowing commercial fishing vessels in the municipal waters will further worsen the rapidly declining fish catch in municipal waters.

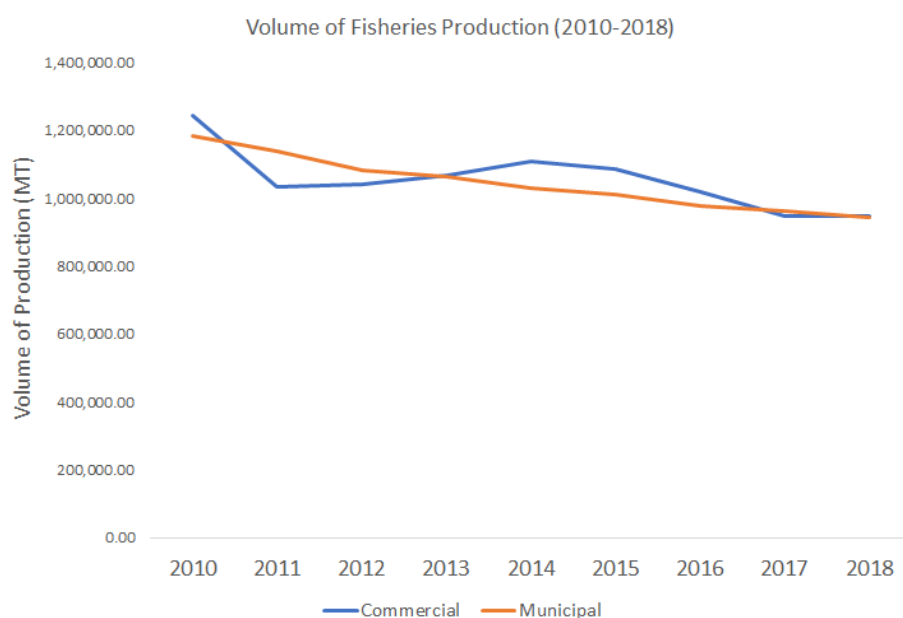


Figure 1. Volume of fisheries production for commercial and municipal marine fisheries from 2010-2018. Source: Philippine Statistics Authority.

2. Municipal waters with their critical marine habitats should be protected and spared from active and destructive fishing gears.

³ Green *et al.*, 2003. Philippine Fisheries in Crisis: A Framework for Management. Coastal Resource Management Project of the Department of Environment and Natural Resources.

⁴ Willette *et al.*, 2011. "Biology and Ecology of Sardines in the Philippines: A Review." (Bureau of Fisheries and Aquatic Resources National Fisheries Research and Development Institute).

⁵ Palomares, M.L.D. Philippine reconstructed catches and biomass of assessed stocks [Powerpoint presentation]. February 1, 2021. Sea Around Us, Institute for the Oceans and Fisheries, University of British Columbia, Canada.

Most critical habitats mangroves, seagrass, and coral reefs are located in municipal waters. These are highly productive areas and are important in the life cycle of many marine organisms including pelagic fishes such as sardines.⁶

The 15-km delineation, a limit to resource access, together with restrictions on types of gears and destructive fishing methods, are necessary for ecosystem sustainability. Allowing commercial fishing in municipal waters would open these areas to the use of active fishing gears which could damage the nearby coral reefs. Protecting municipal waters against unsustainable and illegal fishing would add another layer of protection and decrease exploitation to the local government's coral reef ecosystem.

3. Municipal fisherfolk are displaced and heavily impacted by commercial fishing operations and result in more conflicts between municipal and commercial fishers.

Increasing national catch by commercial fishing vessels would result in inequity of benefit distribution: there is a shift away from benefits accruing to municipal and small-scale fishers, contributing to increasing poverty. This means less benefit for small-scale municipal fisherfolks and their families. This would also result to low subsistence for the municipal fisher's income and low sustenance of their main source of protein.⁷

Opening up municipal waters will result in more conflicts between municipal and commercial fishers. As it is, they are already competing at different levels of capacity since commercial fishers have bigger boats, more sophisticated and efficient gears, and other resources but only pays minimal license fees to have access to millions of pesos worth of fish, while the almost 2 million municipal fishers⁸ have smaller boats

⁶ National Sardines Management Plan. 2020. Bureau of Fisheries and Aquatic Resources.

⁷ Siason *et al.*, 2004. Fish fights over fish rights: Philippine case study on conflict over use of municipal water: synthesis of three case studies in the Visayan Sea. International Food Policy Research Institute (IFPRI).

⁸ Bureau of Fisheries and Aquatic Resources. Total Registered Fisherfolk as of September 3, 2018.

https://www.bfar.da.gov.ph/BFAR_ANNOUCEMENT?id=87&fbclid=IwAR3vdTxmV ITuD9uzLLOux3caLDVHXgTsl2EkFFH1tXqNm3x7sdNYOUHLac#post.

and limited resources in terms of capital and man-power.⁹ Most municipal fishers catch fish in a more sustainable way compared to commercial fishers¹⁰. They use efficient traditional fishing gears with minimal impact to the coral reefs¹¹. Nonetheless, they contribute more to our economy than commercial fisheries. In fact, Philippine Statistics Authority in 2018 reported that municipal fisheries contributed 60% or PhP 93 billion worth of marine fisheries production compared to 40% or PhP61 billion from commercial fisheries^{12 13}.

"It is obvious that industrial fisheries, given their enormous catching capacity and their propensity for using habitat-destroying gear, cannot coexist with artisanal fisheries (Pauly, 2017). Thus, if a government has as an explicit policy (as many do) to encourage artisanal fisheries, it must also ensure industrial vessels do not operate inshore, both legally and in practice."¹⁴

4. House Bill No. 7853 is regressive and violates the Constitution which protects the preferential right of the subsistence fishermen to fishing resources.

The 1987 Constitution mandates the protection of the rights of subsistence fishermen, especially of local communities, to the preferential use of local marine and fishing resources, both inland and offshore, as follows:

"The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers

⁹ Siason *et al.*, 2004. Fish fights over fish rights: Philippine case study on conflict over use of municipal water: synthesis of three case studies in the Visayan Sea. International Food Policy Research Institute (IFPRI)

¹⁰ Palomares and Pauly. 2019. Coastal fisheries: The Past, Present, and Possible Futures. Coasts and Estuaries.

¹¹ Green *et al.*, 2003. Philippine Fisheries in Crisis: A Framework for Management. Coastal Resource Management Project of the Department of Environment and Natural Resources

¹² Philippine Statistics Authority 2018

¹³ Bureau of Fisheries and Aquatic Resources. <https://www.bfar.da.gov.ph/profile?id=17#post>

¹⁴ Palomares and Pauly. 2019. Coastal fisheries: The Past, Present, and Possible Futures. Coasts and Estuaries

shall receive a just share from their labor in the utilization of marine and fishing resources.”¹⁵

This is reiterated in Art. XII, Section 2, of the Constitution which emphasizes the State's duty to protect the nation's marine wealth and the priority to subsistence fishermen:

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

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.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons.

This constitutional policy is further detailed in the Fisheries Code, as amended, which provides that the State should “protect the rights of fisherfolk, specially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters” and “provide support to the fishery sector, primarily to the municipal fisherfolk.”¹⁶

¹⁵ Art. XIII, section 7.

¹⁶ (RA 10654, Sec. 2).

Allowing small to medium commercial fishing vessels would impact more local communities and municipal fisherfolk adversely, as it would immediately deprive them of their catch in near-shore areas.

Fr. Bernas, one of the Constitutional framers, explained that the intent of these provisions in the Constitution is to ensure social justice. The reference to subsistence fishermen and fish workers harmonizes the provision with that in the Article XIII on social justice.¹⁷ Thus, those who have less in life, should have more in law.















Fisheries Benefits	 Large-scale	 Small-scale
Annual catch for human consumption	 about 45 million tons	 about 28 million tons
Fish and other sealife discarded at sea	 10 million tons	 about none
Annual catch reduced to meals and oils	 30–35 million tons	 about none
Fuel consumption	 5–20 tons	 2–5 tons
Number of fishers employed	 about 1/2 million	 about 12 million
Government subsidies (billions of USD)	 25–30 billion USD	 5–7 billion USD

FIG. 7 Schematic illustration of the difference between (coastal) small-scale fisheries and industrial fisheries, that is, coastal and offshore. (Updated from Thompson, D., 1988. *The world's two marine fishing industries – how they compare*. *Naga, ICLARM Q.* 11 (3), 17 and Pauly, D. 2006. *Major trends in small-scale marine fisheries, with emphasis on developing countries, and some implications for the social sciences*. *Maritime Stud. (MAST)* 4(2), 7–22).

5. Fishing in municipal waters is now governed by Fisheries Management Areas system.

¹⁷ Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1185 (2009 ed.).

There is no compelling reason to expand the operations of small and medium commercial fishing vessels to more areas of municipal waters than what is stated as an exception under the law, subject to the provisions of RA 10654 which amended the Fisheries Code of 8550 in 2015.

The subject House Bill has not even mentioned the amendatory law, RA 10654, which has put in place strong measure for sustainable fisheries management including mainstreaming the fisheries management regime. RA 10654 established 12 Fisheries Management Areas (FMAs) that would govern the allowable fishery activities within municipal waters and beyond in accordance with rigorous scientific reference points and harvest control measures.

This is encapsulated in the Fisheries Code, which gives mandate to the Department of Agriculture, through the Bureau of Fisheries, to issue such number of licenses and permits for the conduct of fishery activities subject to harvest control rules and reference points as determined by scientific studies or best available evidence (RA 10654, Section 7). This is threshed out further in Fisheries Administrative Order (FAO) No. 263, which rules provide guidance on how all coastal local government units as fisheries managers take on shared responsibilities with other stakeholders for the conservation and sustainable management of fisheries.

Expanding more fishing grounds in municipal waters for potential operations of commercial fishers would run counter to the FMA system. Already, local governments are working with the Bureau of Fisheries and Aquatic Resources (BFAR), the Department of Environment and Natural Resources (DENR), Department of the Interior and Local Government (DILG), fisherfolks, industry and non-government organizations, and with recommendations from the Scientific Advisory Group, to set reference points or critical range of values of performance indicators of fish, and formulate harvest control rules (HCRs) to guide management.

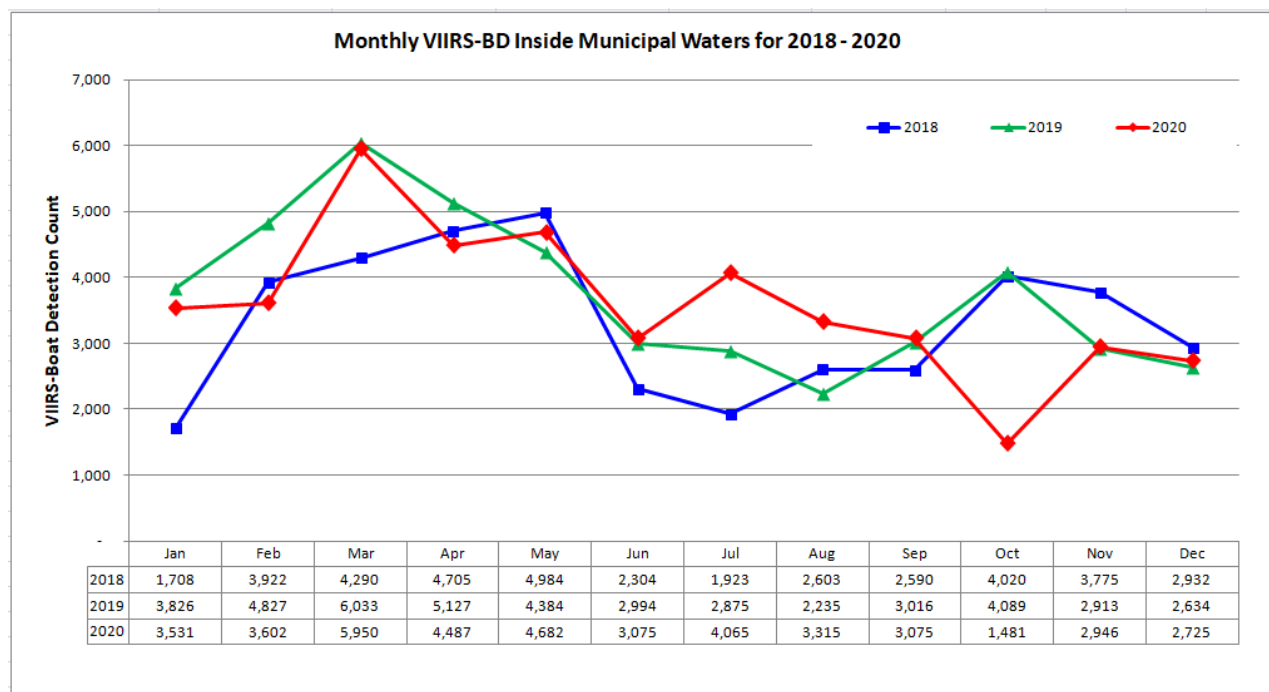
DILG issued a circular to encourage local governments to work with the BFAR and stakeholders to ensure that fishery activities within their municipal waters are consistent with the FMA management plan. It is therefore imperative for LGUs to work with the BFAR and other stakeholders in establishing appropriate rules within the FMA, rather than take a piecemeal approach of LGUs allowing commercial fishing activities within municipal waters.

6. HB No. 7853 attempts to legitimize an otherwise prohibited act.

As a general rule, the amended Fisheries Code prohibits commercial fishing within municipal waters:

*Except in cases specified under this Code, it shall also be unlawful for any commercial fishing vessel to fish in municipal waters.*¹⁸

Data from satellite detection through Visible Infrared Imaging Radiometer Suite (VIIRS) published online in [Karagatan Patrol](#) by Oceana and the League of Municipalities of the Philippines shows that apparent intrusion of illegal commercial fishing using super lights has been persistent through the years and has been identified as one of the top illegal fishing activities by the BFAR (2018).¹⁹ This is a pervasive violation of the law and the preferential rights of municipal fisherfolk access to municipal waters that has been going on for decades.



Above is the graph on VIIRS (night lights) boat detection from 2018 – 2020 prepared by Oceana. Using 2018 as baseline, there was an increase of 8% in detection for 2020 despite

¹⁸ RA 10654, section 86.

¹⁹ https://www.bfar.da.gov.ph/2018/viirs/Phil_lgu&vs_poster_36x24_portrait.pdf

the pandemic. Initial data from apprehended vessels in Tawi-Tawi and other parts of the country suggest that most of these night lights are emitted from commercial fishing boats that encroached in municipal waters. Oceana has brought the apparent night light detections in municipal waters to the attention of the local chief executives in 50 hotspot areas in the country and to the DILG for action.

7. Filipinos are nutritionally dependent on fish.

The Philippines ranks 49 in the top 50 countries with the highest rates of undernourishment prevalence.²⁰ Over 100 million Filipinos are nutritionally dependent on fish for protein sustenance and the Philippines is ranked second in nutritional dependency on their coastal and marine ecosystem.²¹ Most important, a study shows that approximately 10 million Filipinos rely directly on small-scale fishers to meet household food needs,²² with 85% of fishers (between 1.4 and 1.9 million) designated as small-scale.

Small-scale or municipal fishers' preferential right to municipal waters should be fully implemented as this will also ensure that the nutritional needs of communities and the lives of children dependent on their catch will be met. This is particularly true of the 10 million Filipinos directly relying on them to meet their food requirements coming from fish and fisheries products.

8. Climate change aggravates impacts on coastal communities.

As the country is among the most vulnerable to the impacts of climate change and the most affected of them are the fisherfolks and farmers, being the poorest of the poor, HB 7853 should not even be considered.

"Coastal fisheries are beginning to be affected by climate change (Fig. 6) and this impact is only going to increase. Along subtropical and temperate coastlines, climate change will induce a change in the fish communities available for exploitation, as already noticeable in many countries. This is due to the poleward shift of fish and marine invertebrates attempting to maintain themselves in waters with suitable temperatures (Cheung et al., 2009, 2010). In the tropics, however, no warmer-adapted

²⁰ Bennett et al 2018.

²¹ Selig, Elizabeth, et. al., (2018). Mapping global human dependence on marine ecosystems. Conservation Letters. 12. e12617. 10.1111/conl.12617.

²² Armada, N., & Bacalso, R. (2010). Managing Municipal Capture Fisheries in the Philippines. Cebu City: FISH Project.

species will replace the fish and invertebrate species that are displaced by the high temperature, and hence there can only be a net loss as species relocate (Cheung et al., 2013). Thus, it is in the tropics that coastal fisheries will be affected most by global warming, that is, the regions that have least contributed to the greenhouse gas emissions that are the cause of the warming.”²³

In sum, we oppose this bill for setting aside the preferential access to municipal waters given by no less than the Constitution to marginalized fisherfolks. Moreover, allowing commercial fishing within municipal waters will increase overfishing, destruction of marine habitats and undue competition with our vulnerable sectors and aggravate conflicts now existing between municipal and commercial fishers.

We urge our lawmakers to practice evidence-based legislation, especially for a bill that affects the lives of almost 2 million fisherfolks,²⁴ the poorest of the poor. They must gather scientific evidence on the impacts of commercial fishing operations in already overfished municipal waters and how these would affect the livelihood of fisherfolk, who cannot compete with the efficient fishing gears of commercial fishing operators.

Instead, an investigation should be made if fish workers are treated well. A study showed that “Fish workers in commercial fishing operations actually earn way below the minimum wage. These operations are also prone to exploitation and poor working conditions. As prescribed by the national government for fishermen working on commercial fishing, they should be earning a monthly wage of PHP 12,000 - 15,000 with add-ons and bonuses depending on the volume of catch per fishing season, but it has been reported that these “fish workers” in commercial fishing vessels receive an average daily pay of only PHP 150-180 which is way below the minimum wage set for agricultural and non-agricultural workers in rural Philippines.”²⁵

Finally, it bears emphasis that we now have policies and interventions to make our fisheries sustainable. The full implementation of our Fisheries laws and regulations, including the vessel monitoring systems and the science-based, decentralized and participatory Fisheries Management

²³ Palomares and Pauly. 2019. Coastal fisheries: The Past, Present, and Possible Futures. Coasts and Estuaries.

²⁴ Bureau of Fisheries and Aquatic Resources. Total Registered Fisherfolk as of September 3, 2018.

https://www.bfar.da.gov.ph/BFAR_ANNOUCEMENT?id=87&fbclid=IwAR3vdTxmV ITuD9uzLLOux3caLDVHXgTsl2EkFFH1tXgNm3x7sdNYOUHLac#post.

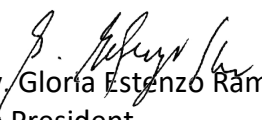
²⁵ Turgo. 2021. A Taste of the Sea: Artisanal Fishing Communities in the Philippines. in V. O. Gekara, H. Sampson (eds.), The World of the Seafarer, WMU Studies in Maritime Affairs 9, https://doi.org/10.1007/978-3-030-49825-2_2.

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Areas regime, is much needed to bring us to a better, safe, healthy and sustainable future that our children deserve.

Submitted on February 8, 2021.

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