

Republic of the Philippines
Ministry of Natural Resources
BUREAU OF FISHERIES AND AQUATIC RESOURCES
Arcadia Bldg., 860 Quezon Avenue
Quezon City

FISHERIES ADMINISTRATIVE
ORDER NO. 121
Series of 1976

SUBJECT: RULES AND REGULATIONS GOVERNING
CHARTER CONTRACTS; LEASE OR LEASE-
PURCHASE PURCHASE AGREEMENTS OF
FISHING BOATS, OR CONTRACTS FOR
ASSISTANCE WITH A FOREIGN PERSON,
CORPORATION OR ENTITY.

Pursuant to the provisions of Sections 7 and 21 of Presidential Decree No. 704, known as the "Fisheries Decree of 1975", the following rules and regulations governing Charter Contracts for financial, technical or other forms of assistance with any foreign person, corporation or entity for the production, storage, marketing and processing of fish and fishery/aquatic products, are hereby promulgated:

SECTION 1. Definitions. - For the purpose of this Order, and unless otherwise indicated or specified, the following shall mean:

- (a) Commercial Fishing - Fishing for commercial purposes in waters more than seven fathoms deep with the use of fishing boats of more than three gross tons;
- (b) Charter Contract - A contract by which a foreign-owned vessel is let by its owner to a Filipino citizen or to a corporation or association with not more than thirty percent (30%) foreign equity participation;
- (c) Contract for Financial, Technical or Other Forms of Assistance - A contract whereby a foreign person, corporation or entity gives financial aid or renders technical or other forms of assistance to a Filipino citizen, qualified corporation or association for the production, storage, marketing and processing of fish and fishery/aquatic products in consideration of a payment as provided in subparagraph (g) of Section 6 hereof;
- (d) Lease or Lease-Purchase Agreement - A lease of a foreign-owned vessel to a Filipino citizen, qualified corporation or association for commercial fishing by a foreign person, corporation or entity, or a lease with the option granted to the lessee to purchase the boat leased, payable whether under lease agreement or under lease-purchase agreement as provided in subparagraph (g) of Section 6 hereof;
- (e) Qualified Corporation or Association - One organized under Philippine laws, seventy per cent (70%) of the capital stock of which is owned by citizens of the Philippines and duly registered with the Securities and Exchange Commission and the Board of Investments;
- (f) Application for Charter Contract, Lease or Lease-Purchase Agreement or Contracts of Assistance - Means an application for approval by the Secretary of a Contract entered into by

- a a Filipino citizen, qualified corporation or association with a foreign person, corporation or entity for the charter, or lease of a foreign-owned fishing boat with the option of purchase, or a contract for financial, technical or other form of assistance;
- (g) MARINA - refers to the Maritime Industry Authority;
- (h) Bureau - refers to the Bureau of Fisheries and Aquatic Resources;
- (i) Director - refers to the Director of Fisheries and Aquatic Resources; and
- (j) Secretary - refers to the Secretary of Natural Resources

SECTION 2. Persons who may enter into charter contracts, lease or lease-purchase agreements or contracts for financial, technical or other forms of assistance - Citizens of the Philippines and qualified corporations engaged in commercial fishing may, subject to the approval of the Secretary, enter into a charter contract, lease or lease-purchase agreement of fishing vessels or contracts for financial, technical or other forms of assistance for the production, storage, marketing and processing of fish and fishery/aquatic products with a foreign person, corporation or entity: Provided, That the aggregate tonnage of such fishing vessels shall not exceed 4,000 gross tons in 1976, 4,200 gross tons in 1977, and 4,500 gross tons in 1978, or a total of 12,700 gross tons from 1976 to 1978; Provided, Further, That after 1978, charter contracts, lease or lease-purchase agreements of such vessels may be allowed by the Secretary, upon the recommendation of the Director, on a case to case basis only, depending upon the further needs of the fishery industry for such vessels.

SECTION 3. Employment of foreign technicians - The employment of foreign technicians shall be governed by Memorandum Circular No. 612 of the Office of the President and/or Presidential Decree No. 715: Provided, That the application for employment shall be referred to the Secretary for comment who shall observe the following guidelines in recommending the approval of the same:

1. The Department of Natural Resources shall, at the expense of the employer, advertise once a week for at least three (3) consecutive weeks in a newspaper of general circulation for the services of such technician;
2. The prospective alien employee shall possess skills and techniques not locally available for the position to be filled calling for such skills;
3. The employment must be vital in the operation of the fishery industry;
4. The alien employee shall train at least two (2) Filipino understudies who shall take over after the termination of the contract; and
5. In no case shall the contract of employment exceed two (2) years extendable for another year as the circumstances may warrant.

SECTION 4. Application - Under Oath - Every application for a charter contract, lease or lease-purchase agreement or contract for assistance shall be accomplished in such form as may be prescribed by the Bureau and shall be subscribed to under oath before a Notary Public or any government official authorized to administer oaths.

SECTION 5. Filing of Application - An application for charter contract, lease or lease-purchase agreement of foreign-owned fishing boats or contracts for assistance shall be filed with the Bureau together with the following:

- (a) Application fee which is not refundable of the one hundred pesos (P100.00) in cash, postal money order or check payable to the Director or his authorized representative;
- (b) Project feasibility study which shall, in an application for charter contract, lease or lease-purchase agreement, state the specific area or areas of fishing operation, vessel specifications and other pertinent data (6 copies);
- (c) In case of a corporation or association, six (6) certified xerox or true copies of the Articles of Incorporation and By-Laws or Articles of Association and By-Laws, respectively, duly approved by the Securities and Exchange Commission as well as its tax clearance;
- (d) Verified statement of financial capacity; and
- (e) Ten (10) copies of the contract duly executed by the parties thereto.

SECTION 6. Stipulations to be included in Charter Contracts, Lease or Lease-Purchase Agreements of Fishing Boats. - A charter contract, lease or lease-purchase agreement shall include the following stipulations:

- (a) The duration of the contract shall not exceed five (5) years from the date of approval by the Secretary, renewable for a period not exceeding five (5) years;
- (b) The foreign crew members of each boat shall not exceed seventy-five per cent (75%) of the complement of the boat;
- (c) The foreign crew members shall be issued fishermen's license subject to security clearance from the Philippine Coast Guard;
- (d) Upon the commencement of actual operations, the Filipino seamen and fishermen shall be given instruction and on-the-job training by the foreign crew members in the operation of the fishing boats and the fishing gears being used;
- (e) The fishing boat, subject of the charter contract, lease or lease-purchase agreement, shall not be sub-let and no assignment or transfer of rights arising out of said contract or agreement shall be made;
- (f) After two (2) years from the date of approval by the Secretary, the foreign crew members shall be replaced by an all-Filipino crew who were trained by them; and

- (g) All payments by the charterer, lessee or lessee-purchaser to the foreign person, corporation or entity shall be made in kind, i.e., in export items of fish and fishery/aquatic products: Provided, That if the alien equity holder furnished or obtains all the required financing for the whole project, the Filipino corporation or partners can commit to pay such funds, if borrowed, with fifty per cent (50%) of the production of the corporation valued at world market prices: Provided, Further, That if for any reason the alien equity holder does not purchase the production at world market prices then the Filipino corporation or partners may sell the same to other buyers.

The stipulations required in paragraphs (b), (c), (d) and (f) shall not be included in the contract when the chartered vessel/vessels under lease or lease-purchase agreement are not manned by a foreign crew.

SECTION 7. Processing and evaluation of application - The application together with the project feasibility study, the contract and other pertinent documents shall be processed and evaluated by the Bureau within Thirty (30) working days from receipt thereof after which it shall be submitted to the Secretary with the Bureau's recommendation for appropriate action.

SECTION 8. Referral of the contract to the proper government agency by the Secretary after its approval - Upon approval of the contract by the Secretary, three (3) copies thereof shall be transmitted to the MARINA and the Central Bank of the Philippines for appropriate action, in case of charter contract, lease or lease-purchase agreement; to the Central Bank in case of financial assistance; and to the National Economic Development Authority if it is for any other form of assistance. A copy of the contract for technical assistance duly approved by the Office of the President and/or the Department of Justice shall be furnished the Bureau accordingly for record purposes.

SECTION 9. Requirements for the Operation of Fishing Boats under a Charter Contract, Lease or Lease-Purchase Agreement - The following shall be accomplished before the actual operation of the fishing boat or boats under charter contract, lease or lease-purchase agreement:

- (a) A temporary certificate of Philippine Registry of the fishing boat under the charter contract, lease or lease-purchase agreement shall be secured from the MARINA. The charterer, lessee or lessee-purchaser shall submit to the Bureau certified copies of all registration and documentation papers, certificates, licenses or other documents necessary or incidental to such registration and documentation;
- (b) The foreign crew members shall register with the Commission on Immigration and Deportation and comply with such requirements as may be made by the said Commission;
- (c) The foreign crew members shall secure security clearance from the Philippine Coast Guard and fishermen's license from the Bureau; and
- (d) The charterer, lessee or lessee-purchaser shall secure a special commercial fishing boat license from the Bureau.

SECTION 10. Application for Special Commercial Fishing Boat License - An application for a special commercial fishing boat license shall be filed with the Bureau accompanied by the following:

- (a) Application fee of one hundred pesos (P100.00) either in cash, postal money order or check payable to the Director or his authorized representative;
- (b) Six (6) copies of the charter contract, lease or lease-purchase agreement, as approved by the Secretary; and
- (c) Certificate of registration and documentation issued by the MARINA for the fishing boat.

SECTION 11. Fees and other charges - The annual license fee for the operation of a foreign fishing boat shall be based on the gross tonnage of the boat, as follows:

- (a) For each foreign fisherman's license 20.00
- (b) For each fishing boat below 100 gross tons 1,000.00
- (c) For each fishing boat 100 gross tons to
250 gross tons 3,000.00
- (d) For each fishing boat over 250 gross tons 5,000.00

SECTION 12. Obligations of charterer, lessee or vendee - The charterer, lessee and/or vendee shall:

- (a) Comply with all existing fishery laws, rules and regulations and those which may hereinafter be promulgated;
- (b) Assume responsibility for any and all acts of his agents, employees or laborers in the operation of the fishing boat covered by the charter contract or lease;
- (c) Submit to the Bureau a report of the catch every month within the first ten days of the ensuing month;
- (d) Pay the fees,
- (e) Secure a temporary Certificate of Philippine Registry for the foreign fishing vessel with the MARINA.

SECTION 13. Grounds for the cancellation of the special commercial fishing boat license - The special commercial fishing boat license may be cancelled by the Director for any of the following grounds:

- (a) Non-use of the special commercial fishing boat license within three (3) months from the date of approval of the contract or agreement;
- (b) Sub-letting the fishing boat and/or assignment of rights arising out of the charter contract, lease or lease-purchase agreement;
- (c) Failure to comply with the obligations set forth in the next preceding section;
- (d) Violation of the terms and conditions of the charter contract, lease or lease-purchase agreement;
- (e) Violation of fishery laws, decrees, rules and regulations; and
- (f) When public interest so requires.

SECTION 14. Penal Provisions - Any violation of the provisions of this Administrative Order shall subject the offender to the penalty imposed under Section 38 (d) of Presidential Decree No. 704, herein quoted as follows:

"Violation of any other provision of this Decree, or of any rule or regulation already existing, or which may be promulgated pursuant to this Decree, shall subject the offender to a fine of from five hundred pesos (P500.00) to five thousand pesos (P5,000.00) or imprisonment from six (6) months to four (4) years, or both such fine and imprisonment, in the discretion of the Court: Provided, That the Director of Fisheries and Aquatic Resources is hereby empowered to impose upon the offender an administrative fine of not more than five thousand pesos (P5,000.00) or to cancel his permit or license, or to impose such fine and to cancel his permit or license, in the discretion of the Director: Provided, Further, That the Director, or his duly authorized representative, and law enforcement agents are hereby empowered to impound with the assistance of the Philippine Coast Guard, if necessary, the fishing boat including the dynamite, blasting caps and other explosives, obnoxious or poisonous substances, and apparatus used in electric fishing, and other apparatus used in illegal fishing pending the termination of the criminal case by competent courts: Provided, Finally, That any person who unlawfully obstructs or delays the inspection and/or movement is authorized under this Decree, shall be subject to a fine of not more than two thousand pesos (P2,000.00) or imprisonment of not more than two (2) years, or both such fine and imprisonment, in the discretion of the Court."

SECTION 15. Repealing Clause. - All orders, rules and regulations or parts thereof, inconsistent with the provisions of this Administrative Order are hereby repealed or modified accordingly.

SECTION 16. Effectivity. - This Administrative Order shall take effect fifteen (15) days after its publication in the Official Gazette and/or two (2) newspapers of general circulation.

(SGD.) JOSE J. LEIDO, JR.
Secretary
and
Concurrently Chairman, FIDC

RECOMMENDED BY:

(SGD.) FELIX R. GONZALES
Director

NOTE: This was published in the Times Journal, Saturday, August 21, 1976; The Evening Post, August 21, 1976.