

REPUBLIC ACT NO. 7881

DATE: February 20, 1995

AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, ENTITLED AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES ADMINISTRATIVE ORDER NO. 04 Subject : Supplemental Guidelines to Administrative Order (A.O.) No. 12, Series of 1994, on Conversion of Agricultural Lands to Non-agricultural Uses, pursuant to Republic Act (R.A.) No. 7881 JOINT DAR-DA-DENR-DILG ADMINISTRATIVE ORDER NO. 01-96

Sec. 1. Section 3, Paragraph (b) of Republic Act No. 6657 is hereby amended to read as follows:

"Sec. 3. Definitions. - For the purpose of this Act, unless the context indicates otherwise:

"(b) Agriculture, Agricultural Enterprise or Agricultural Activity means the cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical."

Sec. 2. Section 10 of Republic Act No. 6657 is hereby amended to read as follows:

"Sec. 10. Exemptions and Exclusions. -

"a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.

"b) Private lands actually directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

"In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

"In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply."

"c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedling research and pilot production center, church sites and convents appurtenant thereto mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act."

Sec. 3. Section 11 Paragraph 1 is hereby amended to read as follows:

"Sec. 11. Commercial Farming. - Commercial farms, which are private agricultural lands devoted to saltbeds, fruit farms, orchards, vegetable and cut-flower farms, and cacao coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period the Government shall initiate steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations which shall thereafter manage the said lands for the workers-beneficiaries."

Sec. 4. There shall be incorporated after Section 32 of Republic Act No. 6657 a new section to read as follows:

"Sec. 32-A. Incentives. - Individuals or entities owning or operating fishponds and prawn farms are hereby mandated to execute within six (6) months from the effectivity of this Act an incentive plan with their regular fishpond or prawn farmworkers 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 right 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.

"The foregoing provision shall not apply to agricultural lands subsequently converted to fishpond or prawn farms provided the size of the land converted does not exceed the retention limit of the landowner."

Sec. 5. There shall be incorporated after Section 65 of Republic Act No. 6657 new sections to read as follows:

"Sec. 65-A. Conversion into Fishpond and Prawn Farms. - No conversion of public agricultural lands into fishponds and prawn farms shall be made except in situations where the provincial government with the concurrence of the Bureau of Fisheries and Aquatic Resources (BFAR) declares a coastal zone as suitable for fishpond development. In such case, the Department of Environment and Natural Resources (DENR) shall allow the lease and development of such areas: Provided, That the declaration shall not apply to environmentally critical projects and areas as contained in title (A) sub-paragraph two, (B-5) and (C-1) and title (B), number eleven (11) of Proclamation No. 2146, entitled "Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement (EIS) System established under Presidential Decree No. 1586," to ensure the protection of river systems, aquifers and mangrove vegetations from pollution and environmental degradation: Provided, further, That the approval shall be in accordance with a set of guidelines to be drawn up and promulgated by the DAR and the BFAR: Provided, furthermore, That small-farmer cooperatives and organizations shall be given preference in the award of the Fishpond Lease Agreement (FLAs).

"No conversion of more than five (5) hectares of private lands to fishpond and prawn farms shall be allowed after the passage of this Act, except when the use of the land is more economically feasible and sound for fishpond and/or prawn farm, as certified by the Bureau of Fisheries and Aquatic Resources (BFAR), and simple and absolute majority of the regular farm workers or tenants agree to the conversion, the Department of Agrarian Reform, may approve applications for change in the use of the land: Provided, finally, That no piecemeal conversion to circumvent the provisions of this Act shall be allowed. In these cases where the change of use is approved, the provisions of Section 32-A hereof on incentives shall apply."

"Sec. 65-B. Inventory. - Within one (1) year from the effectivity of this Act, the BFAR shall undertake and finish an inventory of all government and private fishponds and prawn farms, and undertake a program to promote the sustainable management and utilization of prawn farms and fishponds. No lease under Section 65-A hereof may be granted until after the completion of the said inventory.

"The sustainable management and utilization of prawn farms and fishponds shall be in accordance with the effluent standards, pollution charges and other pollution control measures such as, but no limited to, the quantity of fertilizers, pesticides and other chemicals used, that may be established by the Fertilizer and Pesticides Authority (FPA), the Environmental Management Bureau (EMB) and other appropriate government regulatory bodies, and existing regulations governing water utilization, primarily Presidential Decree No. 1067, entitled "A Decree Instituting A Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources."

"Sec. 65-C. Protection of Mangrove Areas. - In existing Fishpond Lease Agreements (FLAs) and those that will be issued after the effectivity of this Act, a portion of the fishpond area fronting the sea, sufficient to protect the environment, shall be established as a buffer zone and be planted to specified mangrove species to be determined in consultation with the regional office of the DENR. The Secretary of Environment and Natural Resources shall provide the penalties for any violation of this undertaking as well as the rules for its implementation."

"Sec. 65-D. Change of Crops. - The change of crops to commercial crops or high value crops shall not be considered as a conversion in the use or nature of the land. The change in crop should however, not prejudice the rights of tenants or leaseholders should there be any and the consent of a simple and absolute majority of the affected farm workers, if any, shall first be obtained."

Sec. 6. There shall be incorporated after Section 73 of Republic Act No. 6657 a new section to read as follows:

"Sec. 73-A. Exception. - The provisions of Section 73, paragraph (E), to the contrary notwithstanding, the sale and/or transfer of agricultural land in cases where such sale, transfer or conveyance is made necessary as a result of a bank's foreclosure of the mortgaged land is hereby permitted."

Sec. 7. Separability Clause. - If for any reason, any section or provision of this Act is declared null and void, no other section provision or part thereof shall be affected and the same shall remain in full force and effect.

Sec. 8. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved: February 20, 1995I. PREFATORY STATEMENT

Section 5 of R.A. No. 7881 incorporates a new provision in Section 65 of R.A. No. 6657, Section 65-A provides that no conversion of more than five (5) hectares of private lands to fishponds and prawn farms shall be allowed after the passage of this Act, except when the use of the land is more economically feasible and sound for fishpond and/or prawn farm as certified by the Bureau of Fisheries and Aquatic Resources (BFAR), and a simple and absolute majority of the regular farmworkers or tenants agree to the conversion.

To implement the intent and purpose of the aforesaid provisions, these rules and regulations are hereby prescribed.

II. POLICY STATEMENT

A. As a general rule, no conversion of more than five (5) hectares of private lands to fishponds and prawn farms shall be allowed after the passage of this Act.

Conversion of more than five (5) hectares may, however, be allowed subject to the following conditions: (1) when the use of the land is more economically feasible and sound for fishpond and/or prawn farm, to be certified by the BFAR, Department of Agriculture (DA); and (2) that a simple and absolute majority of the regular farm workers or tenants agree to the conversion.

Conversion of agricultural lands of five (5) hectares and below shall no longer be subject to the conditions abovementioned.

B. Piecemeal conversion to circumvent the provisions of this Act shall not be allowed.

C. The Order of Conversion shall be subject to the provisions of Sections 32-A of R.A. No. 6657 (as amended by R.A. No. 7881) on the incentive plan of seven-and-a-half (7.5%) percent of net profit before tax.

III. ADDITIONAL DOCUMENTS TO BE REQUIRED FROM THE APPLICANT

In addition to the common documentary requirements listed under A.O. No. 12, Series of 1994, the applicant shall be required to submit the following documents:

1. Certification from the BFAR that the use of the land is more economically feasible and sound for fishponds and prawn farms (in lieu of the certification from the Department of Agriculture);
2. List of all the regular farmworkers or tenants of the land which will be converted to fishponds or prawn farms, and the written consent of a simple and absolute majority of these workers or tenants; and
3. Incentive Plan pursuant to item IV-A (7) of A.O. No. 03, Series of 1995.

A list of common documentary requirements is attached herein as Annex A.

IV. PROCEDURE

A. The procedures under A.O. No. 12, Series of 1994, shall be followed in the processing of the application for conversion. Since all the areas involved in the conversion application are all above five (5) hectares, the Undersecretary for Planning and Policy shall approve or disapprove all applications above 50 hectares shall be approved by the Secretary.

B. In addition to the procedures enumerated in A.O. No. 12, Series of 1994, the composite team that will investigate the property is required to ascertain the following:

1. completeness of the list of the regular farmworkers or tenants that will be affected by the conversion; and
2. authenticity of the written consent of a simple and absolute majority of the affected workers or tenants.

C. The verification may be undertaken through community surveys, verification from reliable third parties like the Barangay Agrarian Reform Committee (BARC), the Barangay Captain and other responsible persons, actual voting or reaffirmation of their signature and others.

D. The results of this verification shall be contained in their report to be sent to the Regional Director who

shall incorporate the same in the conversion folder for the action of the DAR Central Office.

E. Any dispute or controversy related to the conversion application shall be resolved in accordance with A.O. No. 12, Series of 1994. Any dispute or conflict in the processing and implementation of the Incentive Plan in accordance with Section 32-A of R.A. No. 6657, shall be resolved in accordance with A.O. No. 03, Series of 1995.

V. TRANSITORY PROVISION

This Administrative Order supplements A.O. No. 12, Series of 1994.

V. EFFECTIVITY

This Order shall take effect ten (10) days after publication in two national newspapers of general circulation pursuant to Section 49 of R.A. No. 6657. All orders, circulars, memoranda, and other issuance inconsistent herewith are hereby revoked or modified accordingly.

Diliman, Quezon City. 16 May 1995

ERNESTO D. GARILAO

Secretary
SUBJECT : RULES AND REGULATIONS GOVERNING THE CONVERSION OF PUBLIC AGRICULTURAL LANDS TO FISHPONDS AND PRAWN FARMS PURSUANT TO REPUBLIC ACT (R.A.) NO. 6657, AS AMENDED BY R.A. NO. 7881

I. PREFATORY STATEMENT

Section 5 of R.A. No. 7881 incorporates new sections 65 of R.A. No. 6657. Section 65-A provides that no conversion of public lands into fishponds or prawn farms shall be allowed except under certain conditions to be provided by the concerned government instrumentalities, and that the conversion or change of land use shall not apply to environmentally critical projects and areas pursuant to Title No. (a) sub-paragraph two, (B-5) and (C-1) and Title (B), No. 11 of Proclamation No. 2146. Section 65-B further provides that the Bureau of Fisheries and Aquatic Resources of the Department of Agriculture (BFAR-DA) shall undertake and finish the inventory of all public and private fishpond and prawn farms, and that no lease may be granted until after the inventory is completed. Section 65-C provides for the protection of mangrove areas.

To effectively operationalize the above provisions, these rules and regulations are hereby prescribed.

II. POLICY STATEMENT

A. No conversion of public agricultural lands into fishpond or prawn farms shall be allowed except when the concerned agencies of the government declare a coastal zone as suitable for fishpond development.

B. The Department of Environment and Natural Resources (DENR) shall allow the lease and development of coastal zones for fishpond development provided that the declaration shall not apply to environmentally critical projects and areas as contained in Title No. (A) sub-paragraph two, (B-5) and (C-1) and Title (B), No. 11 of Proclamation No. 2146, entitled "Proclaiming Certain Areas and Types of Projects as Environmentally Critical and within the scope of the environmental impact statement system (EIS) established under Presidential Decree No. 1586", to ensure the protection of river systems, aquifers, and mangrove vegetation from pollution and environmental degradation.

C. Small-farmer cooperatives and organizations shall be given preference in the award of new Fishpond Lease Agreements (FLA) covering areas declared suitable for fishpond and prawn farm development by the provincial government with the concurrence of the BFAR and DENR.

D. The Department of Agrarian Reform (DAR), through the Provincial Agrarian Reform Officer (PARO), shall screen small farmer/fisherfolk cooperatives or associations in coordination with the Cooperative Development Authority (CDA).

E. The local government units (LGUs) shall recommend the conversion of public agricultural lands into fishpond and prawn farms in coordination and confirmation with the BFAR and DENR, respectively.

F. A buffer zone as defined herein shall be established on a sufficient portion of the fishpond area fronting the sea to protect the environment and to be planted to specified mangrove species as determined in consultation with the Regional Office of the DENR, pursuant to DENR Department Administrative Order (DAO) No. 76, Series of 1987.

The Secretary of DENR shall provide the penalties for any violation of this undertaking as well as the rules for

its implementation pursuant to Section 65-C of R.A. No. 6657, as amended by Section 5 of R.A. No. 7881.

G. The proponent shall conduct and Environmental Impact Assessment (EIA) of the area subject of application to determine its suitability for fishpond and prawn farm development.

III. COVERAGE

These Rules and Regulations shall cover public agricultural lands, both alienable and disposable, and lands of the public domain found within the coastal zone which are declared suitable for conversion to fishpond or prawn farm development, by the provincial government, with the concurrence of the BFAR and the DENR.

IV. DEFINITIONS

For purposes of this order, the following terms are defined as follows:

a. Fishpond means an artificially constructed pond for raising fish of any species from fry stage to marketable size, or a natural pond where fish is impounded.

b. Coastal Zone Environment is an area where, at any given time, socio-economic interaction occurs between humans and land-based and sea-based natural resources.

c. Buffer Zones are strips of 50 meters in mangrove or swampland areas throughout the country fronting seas, oceans and other bodies of water and 20 meters on both sides of river channels/banks maintained and developed to enhance the protective capability of the mangroves against strong currents, winds and high waves.

d. Environmental Impact Statement (EIS) refers to the documentation of the Environmental Impact Assessment (EIA) study on the project including a discussion of the direct and indirect consequences upon human welfare and ecological and environmental integrity.

e. Fishpond Lease Agreement (FLA) is a privilege granted by the state to a person or entity to occupy and possess, in consideration of a specified rental, any public land for the raising of fish or other aquatic life with fishpond.

f. Fishpond Development Projects are aquaculture activities within the mangrove ecosystem which include prawn and shrimp culture, seaweed farming, oyster, mussel and clam culture, and other fishpond production activities.

g. Public agricultural lands refer to all alienable and disposable lands not titled administratively or juridically and lands of the public domain whose actual use is agricultural in nature as defined under R.A. No. 7881 which includes the cultivation of the soil, planting of crops and growing of fruit trees and the harvesting of its produce.

h. Conversion shall mean the change in the utilization of the land from agriculture to fishpond purposes as defined by R.A. No. 7881.

i. Environmental Compliance Certificate refers to the permit issued by the President of the Philippines or his duly authorized representative certifying that the new fishpond development will not bring about unacceptable environmental impact and the proponent has complied with the requirements of the EIA System.

V. APPLICANTS

Any person, natural, juridical, may apply for the conversion of public agricultural lands into fishpond or prawn farms; however, in the award of the FLAs, priority shall be given to small farmer/fisherfolk cooperatives and organizations.

VI. QUALIFICATIONS FOR MEMBERSHIP IN A COOPERATIVE AND/OR ASSOCIATION

a. small marginal farmers and fisherfolk residing in the barangay or in the municipality where the area for fishpond development is located;

b. must be a resident in the barangay or municipality for at least six (6) months from the date of filing of the application, to be certified by the Barangay Agrarian Reform Committee (BARC)/Sangguniang Barangay/Non-Government Organizations (NGOs)/Peoples Organizations (POs) of the barangay;

c. willingness of the majority to organize into a cooperative or association and abide by the rules and regulations as provided in the by-laws of the cooperative or association; and

d. must be at least fifteen (15) years of age from the date of filing of the application.

VII. CRITERIA IN THE AWARD OF FISHPOND LEASE AGREEMENTS (FLAs) TO SMALL FARMERS/FISHERFOLK COOPERATIVES AND/OR ASSOCIATION

a. must be a duly organized cooperative and/or association in the locality where the area for fishpond development is located;

b. must be certified and recommended by the DAR through the PARO; and

c. willing to put the minimum financial requirement as provided by the BFAR (a certification from the Land Bank of the Philippines (LBP) guaranteeing the financial requirement may be accepted).

VIII. PROCEDURES

A. Provincial/City/Municipal Government, through the Sanggunian concerned shall:

1. identify coastal zones suitable for fishpond development in coordination with the BFAR, DAR and NGOs/POs in the area;

2. conduct public hearings with the small farmers, fishpond and fish workers, NGOs and POs on the conversion of coastal zones for fishpond development in the area, pursuant to Section 5 of R.A. No. 7881;

3. request the DENR, by way of resolution, to release the area for fishpond development pursuant to Section 9 of P.D. No. 705, as amended by P.D. No. 1559 and as implemented by Ministry of Natural Resources (MNR) Administrative Order (A.O.) No. 3, Series of 1975;

4. issue or pass an ordinance declaring the portion of the subject public agricultural lands or coastal zones suitable for fishpond development upon receipt of a copy of the administrative order issued by the Secretary of DENR approving the release of the area subject of the resolution. The ordinance shall be published in a local newspaper and copies thereof shall be posted in a bulletin board at the entrance of the provincial capitol or city, municipal or barangay hall as the case may be, and in at least two (2) other conspicuous places in the concerned government instrumentalities for a period of fifteen days. The same shall take effect ten (10) days from the date of publication and posting; and

5. transmit the same to the DENR for proper disposition.

B. The DENR, shall:

1. evaluate the resolution and findings of the LGUs and the BFAR on the suitability of the coastal area for fishpond development;

2. determine whether the area subject of the LGU resolution has been zonified, certified and declared suitable for fishpond development pursuant to Section 13 of P.D. No. 705, as amended, and as implemented by MNR A.O. No. 3, Series of 1975 and if so, issue an administrative order declaring the said area as available and suitable for fishpond development and transfer its jurisdiction to the BFAR, copy furnished the concerned LGUs, for proper disposition;

3. on areas not yet zonified and certified as available for fishpond development but recommended by the LGUs with the concurrence of the BFAR, conduct an inspection/investigation on whether the area is suitable and available for fishpond development based on the criteria provided under MNR A.O. No. 3, Series of 1982 subject to the provisions of DENR DAO Nos. 34 and 19, Series of 1991 and 1993, respectively. If the findings indicate that the area is suitable and available for fishpond development, issue an administrative order declaring the area as suitable and available for fishpond development pursuant to R.A. No. 7881; and

4. issue an Environmental Compliance Certificate (ECC) based on the favorable results of the EIA conducted by the proponent.

C. The DA, through the BFAR, shall:

1. provide the PARO with a list of areas zonified and approved by the DENR that are suitable and available for fishpond and prawn farm development;

2. conduct investigation and ocular inspection of the fishpond area;

3. provide application forms and other required documents, accept and process applications for FLAs and collect application fees and other dues thereon, giving preference to small farmer/fisherfolk cooperatives and associations as recommended by the PARO; and

4. prepare and issue FLAs.

D. The DAR, through the PARO, shall:

1. screen prospective beneficiaries such as small farmer/fisherfolk cooperatives or associations in coordination with the CDA upon receipt of a list of areas suitable and available for fishpond development from the BFAR;
2. assist the small farmers/fisherfolk association/cooperative in filing their application for FLAs;
3. extend technical assistance to small farmer/fisherfolk cooperatives/associations in the preparation and documentation of feasibility studies for the development and operation of fishpond and by availing of loan assistance from the LBP; and
4. forward and recommend the application to BFAR together with the certification that the members of the association are coastal fishpond or fish workers in the area.

IX. REPEALING CLAUSE

All other Orders, Circulars, Memoranda and Rules and Regulations or portions thereof inconsistent herewith are hereby revoked, cancelled or modified accordingly, otherwise, they have suppletory effect.

IX. EFFECTIVITY CLAUSE

This Administrative Order shall take effect ten (10) days after its publication in two (2) national newspapers of general circulations.

February 2, 1996