

DEPARTMENT OF AGRICULTURE
Office of the Secretary
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE
ORDER NO. 228
Series of 2008

SUBJECT: Rules governing the organization and implementation of official controls on fishery and aquatic products intended for export to the EU market for human consumption

WHEREAS, general hygiene rules are appropriate for business operators producing and handling all foods; the WTO SPS Agreement recognizes the right of member countries to implement SPS measures necessary to protect human, animal or plant life or health;

WHEREAS, certain fishery and aquatic products may present specific microbiological and chemical hazards, the EU therefore imposes additional and specific hygiene rules for the production and handling of such products, including shellfish;

WHEREAS, rules for Official Controls on fishery and aquatic products are therefore necessary; these rules should mirror the scope of the hygiene rules for business operators and cover all aspects important for protecting public and, where appropriate, fish and shellfish health; they should be based on the most recent relevant information and adaptable to new information as necessary;

WHEREAS, specific Official Controls on the production of fishery and aquatic products are also necessary to check for compliance with the specific criteria and targets laid down in EU legislation;

WHEREAS, the EU specifies that authorities performing Official Controls must operate to criteria that ensure their impartiality and effectiveness, such as having a sufficient number of suitably qualified, trained and experienced staff with access to adequate facilities and equipment;

WHEREAS, Official Controls should be carried out using appropriate techniques, including routine surveillance and more intensive controls such as inspections, audits, sampling and testing, and should be based on documented procedures to ensure they are carried out to a uniform and consistent high quality;

WHEREAS, the frequency of Official Controls should be regular and proportionate to the risk, and include random Controls, taking into account results of checks carried out by business operators under HACCP-based control programmes, designed to meet requirements of food law and animal health rules;

WHEREAS, laboratories analyzing official samples should work in accordance with internationally-approved procedures or criteria-based performance standards, using validated analytical methods, and should in particular be equipped to enable the correct determination of legally-defined standards;

WHEREAS, reference laboratories should be designated to contribute to a high quality and uniformity of analytical results, for example through the application of validated methods, availability of reference materials, the organisation of comparative testing and the training of laboratory staff; reference laboratories should cover all the areas of feed and food law and animal health;

WHEREAS, a number of national, regional and/or international standards appropriate for use in Official Controls have been developed by bodies such as ISO and IUPAC, relating to the operation and assessment of testing laboratories and to the operation and accreditation of control bodies;

WHEREAS, provision should be made to delegate certain Control tasks from the competent authority to a control body, and to define conditions under which such delegation can take place;

WHEREAS, BFAR must ensure appropriate and effective coordination between Authorities responsible for regulating non-food aspects that may impact on the safety of fishery and aquatic products, and between competent bodies to whom responsibilities may have been delegated under this Order;

WHEREAS, the EU does not limit import checks to veterinary aspects but also includes Controls on aspects such as additives, labelling, traceability, irradiation of food and materials in contact with food;

WHEREAS, RP may also be requested to provide information on its control systems; this information, which should be established on the basis of EU guidelines, should form the basis for subsequent EU inspection visits and controls;

WHEREAS, DA-BFAR is mandated by RA 8550 Section 65 (I) to implement an inspection system for the export of fishery and aquatic products and fish processing establishments; by Section 107 to promulgate fisheries administrative orders for purposes of fishery regulation; and by Section 119(d) to establish and maintain quality laboratories in major fish ports and prescribe the highest standards for the operation and maintenance of such post-harvest facilities;

WHEREAS, European Commission Decision 95/190 recognizes DA-BFAR as the Competent Authority to effectively ensure that fishery and aquatic products exported to the EU comply with EU legislation;

WHEREAS, classification of shellfish harvesting areas in accordance with EU requirements has not yet been carried out, it is necessary to introduce an extended implementation period for these specific rules;

NOW THEREFORE, the following rules and regulations governing the organization and implementation of official controls on fishery and aquatic products intended for export to the EU are hereby promulgated:

Article 1

Scope

1. This Order lays down specific rules for the organization and implementation of Official Controls on FABO, their establishments and products to verify their compliance with the specific EU hygiene, safety and other technical requirements set out in Fisheries Administrative Order No. 227, Series of 2008, "Rules and Regulations Governing the Export of Fish and Aquatic Products to the European Union".
2. This Order applies only in respect of the products, premises and management activities of business operators intending to export FA products to the European Union, as defined in Chapter VIII of the Implementing Code of Practice accompanying this Order.

3. Official Controls pursuant to this Order shall be without prejudice to the business operator's responsibility for ensuring food safety and compliance with relevant EU requirements, as laid down in Articles 3 to 9 in Administrative Order No 227, Series of 2008.

4. This Order shall apply without prejudice to Republic Act No 8550, Philippine Fisheries Code of 1998, and the following Fisheries Administrative Orders as applied to the harvesting, production, preparation and processing of fisheries / aquatic products for domestic or non-EU markets:

- a.) No 117, 1975, as amended by No 117_1, 1994: Rules and regulations governing the operation of processing plants for fish and fishery/aquatic products and prescribing/requiring standards, quality control and inspection or processed fish and fishery/aquatic products.
- b.) No. 135: Series of 1981: Governing Importation of Fish and FA Products,
- c.) No. 192: Series of 1997: Establishing the Fisheries Quarantine Service (FQS) in DA-BFAR,
- d.) No 209, Series of 2001: Guideline on the Production, Harvesting, Handling and Transportation of Shellfish for Implementation of the Local Government,
- e.) No 210, 2001: Rules and Regulations on the Exportation of Fresh, Chilled and Frozen Fish and Fishery / Aquatic Products;
- f.) No 211, 2001: Requirements for Pre-processing and Processing Plants, the SSOP thereof and the Processing and Quality Requirements for Shellfish;
- g.) No 212, 2001: Guideline on the Implementation of HACCP System;
- h.) No 214, 2001: Code of Practice for Aquaculture;
- i.) No 247, 2006, Powers and Functions of Regulatory Officers for the Safety and Quality Assurance of Fishery and Aquaculture Products Intended for Human Consumption.

5. This Order establishes the requirement for cooperation and co-ordination between DA-BFAR and other authorities on the enforcement of requirements related to aqua-feed and with other relevant agencies or control bodies mandated to perform delegated tasks.

6. This Order shall apply without prejudice to EU rules on Organic ("Bio") foods, for which specific inspection, control and certification may be required, to Administrative Order 13, 2003: "Guidelines in the Accreditation of Certifying Bodies for Standards on Organic Agriculture" or to Executive Order No. 481, 2005: Promotion and Development of Organic Agriculture in the Philippines.

Article 2

Definitons of Terms and Acronyms

1. For the purpose of this Order, the terms, phrases and acronyms defined in Section 4 of the Introduction to the Implementing Code of Practice accompanying this Order ("The Code of Good Practice for the Organization and Implementation of Official Controls for the Export of Fish and Aquatic Products from the Philippines to the European Union, 2008") shall apply and have legal effect as if they were an integral part of this Order.

2. The general terms defined in Section 4 of the Introduction to the Implementing Code of Practice for Fisheries Administrative Order No. 227, 2008, ("The Code of Good Manufacturing Practice for Business Operators Exporting Fish and Aquatic Products from the Philippines to the EU, 2008") shall also apply.

3. The definitions specific to the harvesting and treatment of bivalve molluscs in Chapter IV of these Implementing Codes of Practice shall also apply, as appropriate.

Article 3

General Obligations of DA-BFAR in the Enforcement of Official Controls

1. DA-BFAR shall carry out effective and appropriate Official Controls at all stages of production, processing and distribution of FA products, in accordance with the criteria established in Article 6.

2. DA-BFAR must ensure that products intended for export to the EU

(i) are despatched only from approved and inspected establishments, and are accompanied by an official sanitary / health certificate, in accordance with the provisions of this Order;

(ii) do not pose a risk to the health of fish and aquatic animals in the EU.

In addition, DA-BFAR shall inform the EU Commission within 24 hours of any outbreak of a fish disease listed in the OIE International Aquatic Animal Health Code, or any such disease as required by the EU.

3. DA-BFAR shall ensure that it has the necessary legal powers to:

(a) grant Authorised Officers appropriate access to FABO premises and relevant documentation;

(b) carry out Official Controls and to take the measures provided for in this Order;

(c) oblige FABO to undergo any inspection carried out in accordance with this Order and to assist staff of DA-BFAR to carry out their tasks; and

(d) prevent the export of any FA product that does not comply with the requirements.

4. DA-BFAR must ensure that adequate financial resources are available to provide the necessary staff and other resources for Official Controls.

Article 4

Delegation of Specific Tasks related to Laboratory Services

1. DA-BFAR may delegate specific tasks related to laboratory services to one or more reputable laboratory recognized by DA-BFAR in accordance with paragraphs 2 to 4. However, the activities referred to in Articles 20 and 21 shall not be delegated.

2. DA-BFAR may delegate specific tasks to a particular laboratory only if there is a precise definition of:

(a) tasks that the laboratory may carry out and the conditions under which it may carry them out;

(b) the extent of the legal responsibilities of the laboratory in respect of the delegated tasks; and

(c) there is proof that the laboratory:

(i) has the expertise, equipment and infrastructure necessary to perform the tasks delegated to it;

(ii) has a sufficient number of suitably qualified and experienced staff; and

(iii) is impartial and free from any conflict of interest as regards the tasks delegated to it;

(d) the laboratory works and is accredited in accordance with European Standard EN 45004 'General criteria for the operation of various types of bodies performing inspection' and/or another standard if more relevant to the delegated tasks in question;

(e) the designated laboratory operates and is assessed and accredited in accordance with the following standards, taking into account criteria for different testing methods laid down in relevant EU feed and food law. Accreditation and assessment may relate to individual tests or groups of tests.

- (i) ISO/IEC 17025: 'General requirements for the competence of testing and calibration laboratories';
- (ii) EN 45002: 'General criteria for the assessment of testing laboratories';
- (iii) EN 45003: 'Calibration and testing laboratory accreditation system - General requirements for operation and recognition';

(f) the laboratory communicates the results of the controls carried out to DA-BFAR on a regular basis and whenever DA-BFAR so requests. However, if the results indicate non-compliance or the likelihood of non-compliance, the control body must immediately inform DA-BFAR;

(g) there is efficient and effective coordination between the DA-BFAR and the laboratory.

3. DA-BFAR must organise, as necessary, audits or inspections of laboratories to which designated tasks have been delegated. If it appears that the laboratories are failing to carry out properly the tasks delegated to them, DA-BFAR may withdraw the delegation. It must withdraw it immediately if the laboratory fails to take appropriate and timely remedial action.

Article 5

Transparency and Confidentiality

1. DA-BFAR must ensure that it carries out its activities with a high level of transparency.

2. In particular, DA-BFAR must make the information required by this Order available to the EC FVO as soon as possible.

3. DA-BFAR must take steps to ensure that members of its staff do not disclose information acquired when undertaking their Official Control duties which, by its nature, is covered by professional secrecy in duly justified cases. Protection of professional secrecy shall not prevent the dissemination by DA-BFAR of information as referred to in paragraph 2.

4. Information covered by professional secrecy includes in particular:

- (a) the confidentiality of preliminary investigation proceedings or of current legal proceedings;
- (b) personal data;
- (c) information protected by national legislation concerning, in particular, professional secrecy;
- (d) information disclosed in reports, applications etc., not otherwise volunteered by the business operator but derived through compulsion, and which may affect his competitive position or that of his products, such as production volume, prices, names of buyers, and such other information that is generally treated as trade secrets.

Provided, however, that DA-BFAR shall not be restrained from issuing the confidential information in any of its investigations, risk analyses or processes in aid of the implementation or enforcement of this Order.

Article 6

Operational Criteria for the Conduct of Official Controls by DA-BFAR

1. DA-BFAR must ensure:

(a) Official Controls on FABO establishments and FA products are effective and appropriate, at all stages of production, processing and distribution, including Controls on FABO product safety management systems, ingredients or materials applied to FA products, and on live aquatic animals.

(b) Official Controls are carried out:

(i) regularly, at an appropriate frequency, and without prior warning, except in cases such as formal audits;

(ii) on a random, risk-assessed schedule determined by DA-BFAR, taking into account:

(a) identified risks associated with FA products and associated businesses, the use of aqua-feed or any ingredients or processes that may influence product safety;

(b) the reliability of any own checks carried out by FABO and his record of compliance with relevant legislation;

(c) any information that might indicate non-compliance.

(c) staff carrying out Official Controls are free from any conflict of interest;

(d) DA-BFAR has access to a suitably-equipped laboratory or laboratories, having an adequate capacity for testing and a sufficient number of qualified and experienced staff;

(e) DA-BFAR has appropriate and properly maintained facilities and equipment;

(f) contingency plans are in place, and are operational in the event of an emergency.

2. DA-BFAR must ensure the impartiality, quality and consistency of Official Controls and laboratories at all levels. In addition, the criteria in paragraph 1(a) - (e) must be fully respected by every authority or control body to which the competence to carry out official controls has been delegated.

3. Efficient and effective coordination and cooperation must be ensured between the respective units and authorities involved where

(i) within DA-BFAR, more than one unit is competent to carry out Official Controls, in particular those at regional or local level;

(ii) the responsibility for other matters that may have an impact on the safety of FA products lies with an authority or authorities other than DA-BFAR.

4. DA-BFAR must carry out internal audits or may have external audits carried out and, in the light of their results, take appropriate measures to ensure that they are achieving the objectives of this Order. These audits must be subject to independent scrutiny and carried out in a transparent manner.

Article 7

Personnel Performing Official Controls

DA-BFAR shall ensure that all personnel performing Official Controls, including staff within control bodies and laboratories to which it has delegated responsibilities under this Order:

(a) receive appropriate training enabling them to undertake their duties competently and to carry out Official Controls in a consistent manner. This training shall cover, as appropriate, the areas referred to in Chapter I of the Implementing Code of Practice accompanying this Order;

(b) keep up-to-date in their area of competence and receive regular training as necessary; and

(c) have the necessary aptitude for multidisciplinary cooperation

Article 8

Approval of Establishments

1. DA-BFAR must make an inspection /audit:

- (i) prior to initial approval of any establishment from which FABO intends to export for the first time;
- (ii) regularly, in the case of all approved establishments, in accordance with Article 6 of this Order.

2. DA-BFAR may approve an establishment for the activities concerned only if FABO has demonstrated that it meets the relevant Philippine food law and additional EU requirements, or equivalent measures, for the management, infrastructure and equipment that are specific to the handling, processing, storage and despatch of the FA products that the FABO wishes to export, as established in Fisheries AO Order No 227, 2008, and its Implementing Code of Practice.

3. DA-BFAR shall give each approved establishment an approval number, which may include a secondary code to indicate the types of FA products.

4. DA-BFAR shall maintain up-to-date lists of approved establishments, with their respective approval numbers and other relevant information, and communicate these to the European Commission.

However, the following need not appear on lists drawn up and updated in accordance with this paragraph:

- (a) establishments handling processed foods that contain FA products mixed with other non-animal products, but for which the EU does not lay down requirements;
- (b) establishments carrying out only primary production, as defined in Chapter I of the "The Code of GMP for Business Operators Exporting Fish and Aquatic Products from the Philippines to the European Union, 2008", implementing Fisheries AO No 227, 2008.
- (c) establishments carrying out only transport operations;
- (d) establishments carrying out only the storage of FA products that do not require temperature-controlled storage such as ambient-stable products in hermetically sealed containers.

5. If DA-BFAR identifies serious deficiencies or has to stop production at an establishment repeatedly and the FABO does not provide adequate guarantees regarding future production, DA-BFAR shall initiate procedures to withdraw permanently the establishment's approval.

However, DA-BFAR may temporarily suspend approval until the FABO provides acceptable guarantees that it will resolve deficiencies within a reasonable period agreed with DA-BFAR.

6. DA-BFAR shall issue a certificate of approval / registration to FA establishments that have satisfactorily met the quality and food safety requirements set by DA-BFAR and the relevant EU requirements.

Article 9

Official Controls on Fishery and Aquatic Products

1. Subject to Article 10, DA-BFAR shall ensure that Official Controls take place in accordance with the requirements of this Order and Chapter III of the Implementing Code of Practice to this Order to verify FABO's compliance with the requirements of Administrative Order No 227, Series of 2008 and other food safety legislation applicable to his products, establishment and operation.

2. In accordance with the provisions laid down under Article 3.3(c), FABO shall be required to provide all assistance necessary to ensure that Official Controls can be performed effectively and shall, in particular:

- (a) permit access to all buildings, premises, installations or other infrastructures;
 - (b) make available any documentation and records required under this Order or which DA-BFAR considers necessary for assessing the establishment.
3. Tasks related to Official Controls shall, in general, be carried out using appropriate control methods and techniques such as monitoring, surveillance, verification, audit, inspection, sampling and analysis.
4. The Official Controls referred to in paragraphs 1 and 3 shall include:
- (a) audits of GHP and HACCP-based procedures, to verify that FABO apply procedures continuously and effectively;
 - (b) the Official Controls specified in Articles 5 to 8; and
 - (c) any particular auditing tasks specified in the Chapter III of the Implementing Code of Practice.
5. Audits of GHP shall concern at least those listed in Chapter III, Section I.4 of the Implementing Code of Practice to this Order.
6. Audits of HACCP-based procedures shall, in particular, determine whether the procedures guarantee, as far as possible, that FA products meet the requirements set out in Chapter III, Section I.5 of the Code of Practice.
7. When carrying out auditing tasks, DA-BFAR shall take special care:
- (a) to establish that staff comply with the requirements of paragraph 2(a) and (b);
 - (b) to verify FABO's relevant records;
 - (c) to take samples for laboratory analysis whenever necessary; and
 - (d) to document elements taken into account the findings of the audit.
8. To support the audit, DA-BFAR may carry out performance tests to confirm that staff performance meets specified parameters.
9. The nature and intensity of auditing tasks in respect of individual establishments shall depend upon the assessed risk. To this end, DA-BFAR shall regularly assess:
- (a) risks to public health and FA product safety, including those associated with catchment and / or harvesting areas;
 - (b) in the case of the slaughter area for farmed aquaculture and fishery products, welfare aspects, as appropriate;
 - (c) the type and volume of inputs & outputs in each of the processes carried out; and
 - (d) the FABO's record as regards compliance with food law.
10. Verification of compliance with the requirements concerning the application of Identification Marks shall take place in all establishments approved in accordance with this Order, including verification of compliance with traceability requirements.

Article 10

Live Bivalve Molluscs

1. DA-BFAR shall ensure that the production and placing on the market of live bivalve molluscs, echinoderms, tunicates and marine gastropods undergo Official Controls described in Chapter IV of the Implementing Code of Practice to this Order.

2. Live bivalve molluscs, echinoderms, tunicates and marine gastropods shall come from production areas that appear on a list to be drawn up, monitored and updated in accordance with Chapter IV, Section I of the Implementing Code of Practice to this Order.

3. The requirement of paragraph 2 shall not apply to Pectinidae harvested outside classified production areas. However, official controls with respect to Pectinidae shall take place in accordance with Chapter IV, Section III of the Implementing Code of Practice to this Order.

Article 11

Sanitary / Health Certification of Fishery and Aquatic Products

1. A sanitary / health certificate meeting the requirements set out in Chapter V of the Code of Practices shall accompany each exported consignment of FA products.

2. DA-BFAR shall issue the required certificate for each consignment of FA products intended for export based on verified compliance to the relevant food safety and quality requirements.

3. The certificate may be issued only by certifying officers, officially designated by DA-BFAR Director in accordance with conditions prescribed by the EU.

4. DA-BFAR shall refuse to issue the certificate(s) if the requirements are not met.

Article 12

Official Controls and Verification Procedures

1. DA-BFAR must carry out Official Controls in accordance with documented procedures which contain information and instructions for staff performing Official Controls, including the subject areas referred to in Chapter III of the Implementing Code of Practice to this Order.

2. DA-BFAR shall have procedures in place to:

- (a) verify the effectiveness of Official Controls that it, and any designated control body, carries out;
- (b) ensure that corrective action is taken when needed; and
- (c) the documentation referred to in paragraph 1 is updated as appropriate.

3. DA-BFAR may establish guidelines for Official Controls particularly on:

- (a) implementation of HACCP principles;
- (b) management systems that FABO may operate to meet the requirements set by DA-BFAR;
- (c) microbiological, physical and chemical safety of FA products.

Article 13

National Reference Laboratories

1. DA-BFAR shall designate one or more National Reference Laboratories.

2. These National Reference Laboratories shall:

- (a) collaborate with other international Reference Laboratories in their area of competence;
- (b) coordinate, for their area of competence, the activities of Official Laboratories responsible for the analysis of samples in accordance with Article 15;

- (c) where appropriate, organise comparative tests between Official Laboratories and ensure an appropriate follow-up of such comparative testing;
- (d) ensure that information supplied by other international Reference Laboratories is effectively disseminated to DA-BFAR and Official Laboratories;
- (e) provide scientific assistance to DA-BFAR for the implementation of coordinated control plans; and
- (f) carry out other specific duties that may be provided for in accordance with this Order.

Article 14

Official Laboratories

1. DA-BFAR shall designate Official Laboratories to analyse samples taken during Official Controls.
2. However, DA-BFAR may only designate laboratories that operate, are assessed and accredited in accordance with the requirements of Article 4.2 of this Order.
3. The accreditation and assessment of testing laboratories referred to in paragraph 2 may relate to individual tests or groups of tests.
4. DA-BFAR shall cancel the designation referred to in paragraph 1 when the conditions referred to in paragraph 2 are no longer fulfilled.

Article 15

Methods of Sampling and Analysis

1. Sampling and analysis methods used in the context of Official Controls on the export of FA products shall comply with relevant EU requirements, or:
 - (a) if no such rules exist, internationally-recognised rules or protocols, for example those developed by ISO, Codex Alimentarius or accepted by the European Committee for Standardisation (CEN); or
 - (b) in the absence of the above, other methods fit for the intended purpose or developed in accordance with scientific protocols.
2. Where no methods meeting the requirements of paragraph 1 exist, validation of alternative methods may take place within a single laboratory, according to an internationally-accepted protocol.
3. Wherever possible, methods of analysis shall be characterized by the appropriate criteria set out in Chapter II of the Implementing Code of Practice to this Order.
4. DA-BFAR shall establish procedures to guarantee the rights of FABO, whose products are subject to sampling and analysis, to apply for a supplementary expert opinion. However, such rights shall not prejudice the obligation of DA-BFAR to take prompt action in cases of emergency.
5. DA-BFAR shall ensure that FABO can obtain sufficient quantity of sample(s) to permit a supplementary expert opinion, unless this is impossible, for example, with highly-perishable products or very low quantities of available material.
6. Samples must be handled and labelled in such a way as to guarantee their legal and analytical validity.

Article 16

Reports

1. DA-BFAR shall draw up reports on the Official Controls that it has carried out.
2. These reports shall include a description of the purpose of the Official Controls, the methods applied, the results obtained and, where appropriate, any actions that the FABO is to take.
3. DA-BFAR shall provide the FABO concerned with a copy of the report referred to in paragraph 2.

Article 17

National Residue Monitoring Report and Plan

1. DA-BFAR shall prepare and implement a centrally-coordinated, integrated National Residue Monitoring Plan and Report in accordance with the requirements of EU legislation. This plan shall comprise the elements described in Chapter VI of the Implementing Code of Practice to this Order and be regularly updated in the light of experience and results obtained and, if necessary, at the request of the EC.
2. DA-BFAR shall monitor all stages of FA production to detect the presence of residues and substances listed in Chapter VI, Section 5 in live FA animals and their products, and in their feed and water.
3. DA-BFAR may delegate sampling and analysis to an appropriate control body but shall be responsible for co-ordinating the activities of, and results obtained by, all such bodies and any other central and regional departments responsible for monitoring the various residues. Such coordination shall include other authorities responsible for preventing the fraudulent use of substances in the FA production chain.
4. DA-BFAR shall send to the EC FVO, not later than 31 March of each year, an updated plan and results from the previous year, including results of any additional or specific surveys that it may have undertaken.
5. Without prejudice to checks carried out in connection with the Plan, DA-BFAR may conduct official random checks at any point in:
 - (a) the manufacture and distribution of substances included in Group A in Chapter VI, Section 5.B;
 - (b) the animal feed production and distribution chain;
 - (c) the production chain of FA products.

These checks must be conducted with a view to detecting the possession or presence in any establishment of prohibited substances intended to be administered, illegally, to FA animals.

6. If fraud is suspected, and a positive result obtained from any checks, DA-BFAR shall:
 - (a) obtain all the information required to identify the source of the FA product;
 - (b) determine the reasons for the presence of the residues;
 - (c) in the case of illegal treatment, investigate the source of the substance concerned;
 - (d) carry out any further investigations which it considers necessary.
7. If the presence of a prohibited substance is proven, DA-BFAR must ensure that the FA product is not exported.

Article 18

National Enforcement Control Information

1. DA-BFAR shall provide the EC with accurate, up-to-date information on the organisation and management of national sanitary control systems, as outlined in Chapter VII of the Code of Practice, and in particular those relevant to FA products intended for export to the EU, including:

- (a) adopted and/or proposed sanitary or phytosanitary legislation;
- (b) control and inspection procedures, production and quarantine treatment, pesticide approval processes and residue tolerances, and food additive approval procedures;
- (c) risk-assessment procedures, factors taken into consideration, and the determination of the appropriate level of sanitary or phytosanitary protection;
- (d) where appropriate, follow-up action taken in response to recommendations made following EC FVO controls carried out in the Philippines.

2. The information referred to in paragraph 1 may also relate to:

- (a) results of the national controls carried out on goods intended to be exported to the EU;
- (b) important changes which have been made to the structure and functioning of the relevant control systems, in particular to meet EU requirements or recommendations.

Article 19

Contingency Plans for Fishery and Aquatic Products

1. DA-BFAR shall draw up operational contingency plans setting out measures to be implemented without delay when FA products are found to pose a serious health risk to humans or aquatic animals.

2. These contingency plans shall specify:

- (a) the administrative authorities to be engaged;
- (b) their powers and responsibilities; and
- (c) channels and procedures for sharing information between the relevant parties.

3. DA-BFAR shall review these contingency plans as appropriate, particularly in the light of any changes in the organization of DA-BFAR and experience, including that gained from simulation exercises.

4. Where necessary, implementing Orders may be adopted to establish coherent rules for the authorities responsible for operating contingency plans and any specific actions that FABO shall be required to take.

5. DA-BFAR shall disseminate the mechanics of the contingency plan as widely as possible among stakeholders, including primary producers, through an appropriate and easily-understood operation manual which can immediately be applied as guidelines in the event of any crisis situation.

Article 20

Actions in the Event of Non-compliance

1. If an inspection by DA-BFAR indicates evidence of non-compliance with this Order, DA-BFAR shall take any of the actions specified in Paragraph 2, taking into account of the nature of the non-compliance and the FABO's past record of non-compliance.

2. Such action may include, where appropriate, the following measures to:

(a) ensure compliance with relevant legal requirements by such sanitation procedures or corrective action deemed necessary to ensure the safety of FA products, such as:

(i) treatment or processing, including decontamination, where appropriate, but excluding dilution, to bring the FA products into compliance with the requirements of EU law; or

(ii) appropriate permitted treatment or processing to bring the FA products into compliance with the requirements of RP or a non-EU country; in which case, steps must be taken to ensure that the products are not exported, directly or indirectly, to the EU;

(iii) processing in any suitable manner for purposes other than animal or human consumption.

Pending further treatment or processing, or confirmation of the reasons for rejection, DA-BFAR shall place consignments under official detention.

DA-BFAR shall ensure that treatment or processing takes place in establishments under its control, or under the control of another designated control body.

(b) restrict or prohibit the export to the EU of FA products by the FABO concerned;

(c) monitor or, if necessary, order the recall, withdrawal and/or destruction of the FA products;

(d) authorize the use of the products for purposes other than those originally intended;

(e) withdraw approval of the establishment in accordance with Article 8.5;

(f) institute any other measure it considers necessary, including criminal proceedings if applicable.

3. DA-BFAR shall, as soon as reasonably practicable, provide FABO or the latter's representative, with:

(a) written notification of the action to be taken;

(b) the reasons for the decision; and

(c) information on rights of appeal, the applicable procedures and time limits.

Article 21

Amendment of this Order and the Code of Practice

1. This Order and the Implementing Code of Practice may be amended or supplemented by such other standards, practices and requirements that may be developed by DA-BFAR, acting on its own initiative, or to incorporate those of relevant government agencies or international bodies; such changes shall be adopted and promulgated by DA-BFAR through legally-binding amendments or supplementary issuances.

In particular, the Chapters of the Implementing Code of Practice may be amended to take into account changes that may be specified by the EU as a result of scientific and technical developments.

2. DA-BFAR shall ensure that FABO exporting FA products are made aware of, and comply with, the EU requirements from time to time in force and, in particular, revisions to those set out in Article 3.3 of Fisheries Administrative Order No. 227, Series of 2008, "Rules and Regulations Governing the Export of Fish and Aquatic Products to the European Union", and:

- (a) additional health standards or checks that may have been introduced by the EU;
- (b) freshness criteria and limits with regard to histamine and total volatile nitrogen;
- (c) health standards and processing requirements for live bivalve molluscs, including:
 - (i) limit values and testing methods for biotoxins;
 - (ii) virus testing procedures and virological standards;
 - (iii) sampling plans, methods and analytical tolerances to be applied during compliance checks;
 - (iv) treatments that may be applied in a processing establishment to live bivalve molluscs from class B or C production areas that have not been submitted to purification or relaying; and
 - (v) requirements of Article 10 of this Order relevant to harvesting and export of live bivalve molluscs.

Article 22

Penal and Other Provisions

1. Penalties - (a) The Local Government Unit (LGU) concerned shall by appropriate ordinance, penalize fraudulent practices and unlawful possession or use of instruments of weights and measures in violation of Section 62 of R.A. 8550.

(b) For violation of Section 100 (e) of R.A. 8550 - any importation or exportation of fish and fisheries species shall be punished by eight (8) years of imprisonment, a fine of eighty thousand pesos (P80,000.00) and destruction of live fishery species or forfeiture on non-live fishery species in favour of DA-BFAR for its proper disposition: Provided, that the violator of this provision shall be banned from being members or stockholders of companies to be created in the future, use guidelines for which shall be promulgated by DA-BFAR.

2. Revocation - Except that, without prejudice to the safety of any live bivalve molluscs supplied for export to the EU, the specific provisions of any Articles of this Order and Chapter IV of the Implementing Code of Practice related to the classification of harvesting areas for live bivalve molluscs shall come into effect not later than the 1st January, 2009.

3. Separability Clause - Any provisions in previous orders, rules and regulations inconsistent with the provisions of this Order as they apply to exports to the EU are revoked and superseded accordingly.

4. Effectivity - The order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation and fifteen (15) days after its registration with the Office of the National Administrative Register.

Issued this 20th day of November 2008 at Quezon City, Philippines

(SIGNED)

ARTHUR C. YAP

Secretary, Department of Agriculture

Recommended by:

(SIGNED)

MALCOLM I. SARMIENTO, JR.

Director, Bureau of Fisheries & Aquatic Resource

(SIGNED)

EMMANUEL J. PARAS

Chairman, National Fisheries and Aquaculture Management Council

Code of Practice Governing the Organization and Implementation of Official Controls on Fishery and Aquatic Products intended for Export to the EU Market for Human Consumption

Fisheries Administrative Order No. 228, Series of 2008