



INTEGRATED MANAGEMENT OF LAGOON ACTIVITIES IMOLA PROJECT

NATIONAL AND PROVINCIAL LAWS, REGULATIONS AND PLANS THAT HAVE INFLUENCE ON RESOURCE MANAGEMENT OF LAGOON SYSTEM IN THUA THIEN HUE PROVINCE

Stefano Albisinni

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PEOPLE'S COMMITTEE OF THUA THIEN HUE PROVINCE



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STUDY STRUCTURE

This study is intended to discuss some of the main legal issues that might be confronted in analysing the legal framework on the resource management in a lagoon system. The scope is also to provide an inventory of national and provincial regulations and plans, and their extent, that have influence on the resource management; and to identify national, regional and local authorities in charge of management. Furthermore, the study has the intention of briefly discussing some forms of co-management in the lagoon.

Chapter 1 discusses some of the grounding legal issues on the resource management in an coastal area. These include the definition and demarcation of the area (the lagoon and its water surface area, land area and special-use water surface), and the legal status of the area as provided for in legislation at national level. The Chapter concentrates also on the consequences of the established extensive conceptual definition of the area, and examines vertical and horizontal institutional overlaps.

Chapter 2 firstly concentrates on the legal concepts of ownership, People's ownership and use rights, as essentially provided for in the Constitution and Civil Code of Vietnam. Then, it focuses on how these concepts are adopted by national Laws and Decrees with respect to each area of the lagoon. In particular, it concentrates on the rights of water users within the open access regime of the lagoon; the rights of land users within the Vietnamese land regime (allocation and lease of land, and land use certificates); and the rights over the special-use water surface area.

Chapter 3 provides an analysis of national Laws, and implementing Decrees, that regulate some of the activities carried on in the lagoon: capture fisheries and aquaculture. Then it concentrates on the legislation at provincial level underlying the extent, gaps and contribution to an integrated coastal resource management. In the end, the discussion focuses on forms of co-management as specifically regulated in the Thua Thien Hué province: Fisheries Associations.

In the end, the study is supplemented by the relevant legislation in Thua Thien Hué province that has been analysed (Annexes 1,2 and 3).

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CHAPTER 1

DEFINING THE AREA: THUA THIEN HUE LAGOON

1. INTRODUCTION

Given the different methods used to address the definition of a specific area, defining a "lagoon" within the Vietnamese legislative approach might depend on different perspectives and approaches.

This chapter will take in consideration the water surface, the land surface, and the intermediate area between the water and land surface that is considered as "special-use water surface". It is also intended to provide a legal overview of these subjects and to set out the relevant and applicable legislation at national level.

2. WATER SURFACE

Vietnamese legislation does not provide a specific concept of a lagoon. Several legal documents categorize a lagoon in different ways, providing different definitions. But each legal document utilizes terms that refer to definitions provided for in other legislative texts, with a different scope and object of regulation. Implicitly, all these documents, and their specific contents, are considered relevant for regulating a lagoon area.

With references to physical attributes, Circular No. 18/2004/TT-BTNMT of August 23, 2004 guiding the implementation of the Government's Decree No. 109/2003/ND-CP of September 23, 2003 on Conservation and Sustainable Development of Submerged Areas¹ defines a lagoon as an "inland wetland"², which must be read as an "area submerged in fresh or brackish water", including in such definition even "rivers, streams, canals, ditches, special-use water surface, lakes and ponds"³.

Another definition of "lagoon" is enunciated in Article 3 of the Law on Water Resources (No.8/1998/QH10 of May 20, 1998) as "water source", which must be interpreted as a "form of accumulation of natural or artificial water which may be exploited or used",

¹ Issued pursuant to the December 25th, 2001 Law on Government's Organization; the December 27th, 2003 Law on Environmental Protection; the July 14th, 1993 Law on Land; the December 2nd, 1998 Law amending and supplementing a number of articles of the Land Law; the June 29th, 2001 Law amending and supplementing a number of articles of the Land Law; the May 20th, 1998 Law on Water Resource; the August 19th, 1991 Law on Forest Protection and Development; and the April 25th, 1989 Ordinance on protection and development of aquatic resources.

² In Part I, General Provisions, Chapter II, "Classification of wetlands".

³ Note that the Code based upon the Ramsar Classification System for Wetland Type (under the International Ramsar Convention on Wetland, Iran, 1971) distinguishes between "marine/coastal wetlands" and "inland wetlands", and on the contrary it includes "coastal brackish/saline lagoon" in the former.

including even "rivers, lakes, and ponds". By this Law, a lagoon might be also included in the term "surface water", that is "water existing on the ground of continental land", as literally explained.

The Land Law (Law No.13/2003/QH11), in Article 78, considers "lakes" as "internal water surface", and the term "lagoon" appears within the "land with inland water surface" in the State President Order No.23/2003/L-CTN, Article 78 (that implements the Land Law).

Furthermore, the lagoon might be categorised as "internal water" like so adopted by the Fisheries Law (Law No. 17/2003/QH 11) in order to define one of the core areas in which it regulates "fisheries operations", (Article 2, point 4). By this Law, and referring to the activity of aquaculture, even the "aquaculture lands" includes "lagoons" (Article 2, point 6).

3. SPECIAL-USE WATER SURFACE

In practice, referring to the Thua Thien Huè lagoon system, the "special-use water surface" is regarded as the zone between the wet-side and dry-side of the lagoon⁴, on which aquaculture ponds (with soil borders) are build.

The Land Law (Law No.13/2003/QH11) and Decree 181/2004/ND-CP of October 29, 2004 on the implementation of Land Law classify land categories, and it includes the "special-use water surface" within the "non-agricultural land group"⁵, comprising also "rivers, arroyos, canals, ditches and streams". However, these texts leave out a specific definition of this area.

But these human-made wetlands⁶, consisting in aquaculture ponds, might be even considered as "aquaculture land" as prescribed in Article 2 of the Fisheries Law: "Aquaculture land includes... non-agricultural land with water-surface"⁷.

Furthermore, since the lack of clarity on this zone positioning and legal definition, this area might be even considered as "coastal water surface land", as provided for in the State President Order No. 23/2003/L-CTN on the implementation of Land Law.

4. LAND SURFACE

Considering the land affected by its proximity to the lagoon water surface, land categories are determined on different grounds and can be categorized as agricultural land, non-agricultural land or unused land, as provided for in the Land Law. (*see Chapter 2, Paragraph 4*)

4 Following the Ramsar classification such areas might be included in the category of "**permanent freshwater marshes/pools; ponds (below 8 ha), marshes and swamps on inorganic soils**".

5 Other land groups are the "agricultural land group" and "unused land group".

6 As prescribed by the Code based upon the Ramsar Classification System for Wetland Type.

7 Note that Land Law on the contrary includes "aquaculture land" in the "agricultural land" (see above note 2).

5. RELEVANT LEGISLATION AT NATIONAL LEVEL

From this first analysis, by focusing on defining the specific zone of the “lagoon”, it is clear that several national Laws, Decrees and other subsequent implementing legislative documents, each with different scope and subjects of application, have influence on the management of the lagoon system and are applicable on such coastal area:

Law on Water Resources (No.8/1998/QH10 of May 20, 1998);

- Government’s Decree No. 179/1999/ND-CP stipulating the implementation of the Law on Water Resources;

Fisheries Law (Law No. 17/2003/QH 11);

- Government’s Decree No. 27/2005/ND-CP of March 8, 2005 on the implementation of certain articles in the Fisheries Law

Land Law (Law No 13/2003/QH11);

- Decree 181/2004/ND-CP of October 29, 2004 on the implementation of the Land Law;
- State President Order No. 23/2003/L-CTN on the implementation of Land Law;
- Directive No. 05/2004/CT-TTg on organizing the implementation of the Land Law;

Government’s Decree No. 109/2003/ND-CP of September 23, 2003 on Conservation and Sustainable Development of Submerged Areas;

- Circular No. 18/2004/TT-BTNMT of August 23, 2004 guiding the implementation of the Government’s Decree No. 109/2003/ND-CP of September 23, 2003 on Conservation and Sustainable Development of Submerged Areas.

6. CONSEQUENCES

The first consequence is that such a broad legal framework does not provide an accurate definition of the area of the lagoon (understood as comprising the water surface, land surface, and the zone in between); instead, it establishes a more than sufficient flexible description to accommodate the realities of the coast.

An extensive conceptual definition may be appropriate for management and policy purposes. Indeed, an approximate characterization of an area allows to control human activities, that negatively impact a coastal ecosystem for example, wherever these activities occur.

On the other hand, it is important to bear in mind that greater precision is required where rights and obligations are affected, whether or not something is situated or an event occurs, within or outside a particular defined zone.

Institutional framework

Several different Laws and Government’s Decrees (given their national extent) establish tasks, duties and responsibilities to specific Ministries to guide the implementation of the same Law or Decree; at the same time, these Laws and Decrees establish that different Ministries and People’s Committees (at provincial, district, or commune level) direct the organization for the implementation; in similar manner, different Departments of other Ministries are in charge for to assist in performing the function of the State Management.

A specific example might be useful for better understanding.

The Government’s Decree No.109/2003 on Conservation and Sustainable Development of Submerged Areas provides principles for the conservation and sustainable development of the submerged areas.

It also establishes the content of the State management over this issue: conducting surveys of, and research into, submerged areas; formulating mechanisms, policies and laws for the conservation and sustainable development; elaborating planning and plans on the use; managing activities of the exploiting submerged areas resources and potentials in the field of agriculture, aquaculture, tourism and traffic; examining, inspecting, and handling violations (e.g.). The Decree states that the Minister of Natural Resources and Environment shall perform the functions of State management and guide the implementation of the Decree.

The Circular No.18/2004 guides the implementation of the above mentioned Decree, and it states:

- "The Ministry of Agriculture and Rural Development, the Ministry of Fisheries and the People's Committees of the provinces and centrally-run cities where exist wetlands shall direct the organization of the conservation and sustainable development of wetlands under the provisions of Decree No. 109/2003/ND-CP and this Circular";

- "The Environment Department, the Environmental Impact Evaluation and Assessment Department; the Environmental Protection Agency, the Water Resource Management Department, the Inspectorate of the Ministry of Natural Resources and Environment shall, according to their functions, have to assist the Minister in performing the function of State management over conservation and sustainable development of wetlands nationwide";

"The provincial/municipal Natural Resources and Environment Services of the localities where exist wetlands shall have to assist the provincial/municipal People's Committees in performing the State management over wetlands according to the provisions of Decree No. 109/2003/ND-CP and this Circular".

Such a system not only create confusion in defining functions, powers and responsibilities of Ministries and agencies, but it also does not clarify and delimit their jurisdictions in performing the State management over the coastal area.

The unclear defined parameters(?) of each government agency's area of responsibility, first of all breaks the fundamental vertical link(?) within each institution; secondly they contribute to arise conflicts both between different tiers(?) of government claiming competence in respect of the same matter ("vertical overlap") and between different sectoral agencies operating in coastal areas ("horizontal overlap").

And, the institutional framework does not provide any pattern for resolving jurisdictional disputes among institutions and agencies.

Only a general reference to this issue might be found in Article 112 of the Vietnamese Constitution (1992) that refers to the Government to "direct the work of the ministries, the organs of ministerial rank and the organs of the Government, the People's Committees at all levels; to build and consolidate the unified system of the apparatus of State administration from the centre to the grassroots; to guide and control the People's Councils in their implementation of the directives of superiors organs of State administration".

Bearing in mind that overlaps are inevitable between the competences of different sectoral agencies in a coastal area, a system as such might not ensure that management programmes, policies and plans at each level are consistent with those at other levels, in order to achieve vertical policy consistency(?). It also might be inappropriate to reduce administrative inefficiencies and duplications to a minimum.

Generally speaking, this can only have bad effects for any attempt of de-centralization or de-concentration of powers, duties and responsibilities within the Vietnamese institutional system.

CHAPTER 2

OWNERSHIP AND USE RIGHTS IN THE COASTAL AREA

1. OWNERSHIP

In the Socialist Republic of Vietnam, the concept of ownership and the rights flowing from it are delineated in the Civil Code and in the Constitution.

Ownership is understood as being like a container of rights in relation to the property in question. In particular, these rights are stated in Article 173 of the Civil Code: "ownership rights include the owner's right to possession⁸, right to use⁹, and right to dispose¹⁰ of property in accordance with the provisions of law"; whereas the owners "are individuals who, and juridical persons or other subjects which, have all of the three rights".

As stated in Article 172 of the Civil Code, the property on which the owner has the right of possession, use and disposal "includes tangible¹¹ objects, money or papers which can be valued in terms of money and property rights", so defining the relationship between a person (an individual or a legal entity) and a thing.

People's ownership

The Civil Code (Article 295) and the Constitution (Article 17) establish, both in similar way, that "land, mountains and forests, rivers and lakes, water sources, natural resources in the ground, resources from the sea... come under the People's ownership".

By an extensive interpretation¹² of the enumerated "lakes" and/or "water sources", it is possible to consider the water surface area of the lagoon as a form of property coming under the People's ownership; no doubt regarding the land surface area of the lagoon;

⁸ "The right to possession is the right of an owner who, on his/her own, keeps and manages the property under his/her ownership" (Article 189, Civil Code).

⁹ "The right to use is the right of an owner to exploit the utility and to enjoy the fruits and income from the property" (Article 198, Civil Code).

¹⁰ "The right to disposal is the right of an owner to transfer his/her ownership rights over a property to another person or waive such ownership rights. An owner shall have the right to sell, exchange, give as a gift, lend, bequeath, or waive [his/her ownership rights] or perform other forms of disposal [of his/her own ownership rights] by him/herself with respect to the property" (Article 201, Civil Code).

¹¹ A literal translation of the Vietnamese term "cũ thực" would be "real", but it appears that the term "tangible" is more appropriate in the context (with reference to Clifford Chance and Backer & McKenzie Civil Code translation).

¹² Following the meaning of "interpretation" as considered in the legal systems of continental countries mainly statute-oriented.

consequently, it seems likely to include the zone managed as “special-use water surface” too, thanks to its positioning in between the water and land area.

Similarly, People’s ownership is stated over land¹³ (by the Land Law), water resources (by the Law on Water Resources) and fisheries resources (by the Fisheries Law).

Thus, it seems appropriate to consider that the whole lagoon area (water surface area, special-use water surface area, and land area) is recognised in law as being under the People’s ownership.

2. RIGHTS WITH RESPECT TO PROPERTY UNDER PEOPLE’S OWNERSHIP

With respect to the property under the People’s ownership, the State is the representative of the owner. As provided for in Article 206 of the Civil Code: “The State of the Socialist Republic of Vietnam exercises the rights of the owner with respect to property under the People’s ownership”.

Similarly, the Land Law, the Law on water resources and the Fisheries Law establish the State management over the respective regulated objects.

It means that the State exercises the whole owner’s container of rights: possession, use and disposal.

Then, Article 212 of the Civil Code specifies that: “In circumstances where provided by law and permitted by the competent State authority, non-State enterprises, family households, co-operative groups and individuals may use land and exploit aquacultural product resources and other natural resources under the People’s ownership, and must use and exploit [it] effectively and for the designated purpose and to fully perform the obligations to the State in accordance with the provisions of law”.

As a consequence, with respect to the property under the People’s ownership, the “owner” (here understood as a single entity of the inclusive “People”) maintains the right of use but he/she is in principle deprived of the other two rights in the container: the right to possession and the right to disposal of the specific object of the property.

In general terms, the State (exercising the rights of the owner) remedies to this deprivation by a system of allocation and leasing of the land areas that entitles the owner to possess and to dispose of the land. (*see above Paragraph on land area*)

Such a system of allocation and leasing is not in principle provided for water surface areas.

3. RIGHTS OVER THE WATER SURFACE AREA

Given that lagoons, fisheries resources and water resources are under the People’s ownership; considering that Fisheries Law states that “Organizations and individuals have the rights to exploit the fisheries resources as provided for the legislation”; that the Law on Water Resources establishes that “Organizations and individuals are entitled to exploit and use the water resource for life and production”¹⁴; but over all because of the

¹³ Including agricultural, non-agricultural and unused land (see below Chapter 1).

¹⁴ Important to note that the scope of this Law is focused principally on the protection of the environmental quality and on the use and exploitation of water resource for agricultural and aquaculture purposes, so excluding capture fisheries.

characteristic of fisheries resources to freely move in their aquatic living environment, the water surface area of the lagoon is considered to be under an open access regime.

This means that everybody (constituting the People) has the right to access, the right to use and the right to exploit the water surface area.

And implicitly, nobody can possess and dispose of a delimited area of the water surface.

But in practice, the use of specific nets in the lagoon, specifically for culture of fishing resources purpose, has particular consequences.

Fishing nets in general, because of their purpose and capacity of capturing fisheries, might be considered as the tools for exploiting natural resources such as water surface areas.

In the specific case of net-enclosures for aquaculture activities, located in the water, these not only prevent fisheries resources to freely move in the whole water area (both the ones inside and the other outside the nets), but they also limit the right of access, use and exploit of the other users, at least on some parts of the lagoon. Even more impacts if the practice of net-enclosures is widespread in the water area (as it seems to be in the Thua Thien Huè lagoon).

As a consequence, the theoretical structure of the open access regime fails.

Net-enclosures delimit a specific area of the water on which the owner (of the net) gains the right of possession and disposal of different objects (from the net): not only fisheries resources¹⁵, but also water surface.

This is also confirmed by the customary law in the lagoon. Traditionally, fishermen have been disposing (selling, leasing and inheriting) of their net-enclosures. But the objects of their disposal were not only the nets but even their positioning, so including the water inside too.

Recently, the legislation at district and commune levels provides for a system of permission certificates in order to place a new net-enclosures, due to the density in the lagoon.

But the owners of the nets, only allowed to place the nets, still maintain the customary rights to possess and dispose of the water surface (indeed, they can sell, exchange, lease, give as a gift, and inherit it).

Thus, it seems possible to consider the effects of such permission certificates as the effects of the land use right certificates granted by the State to land users. (*see below the next Paragraph*)

Even more controversial appears Article 78 of the Land Law, that regulates the use of inland water surfaces.

By this provision, the State can allocate and lease "lakes" to economic organizations, households and individuals for aquaculture or agricultural production.

The article takes in consideration also lakes of broad extension (as it is the lagoon object of this study). Indeed, it regulates that the use of lakes, located within the areas of different communes or districts, is respectively decided by the People's Committees of the relevant districts and province.

Furthermore, it is important to note that Fisheries Law, regulating aquaculture activities (Articles 28-31), provides for a regime of allocation and lease of marine areas for

¹⁵ This is the same principle of fencing a land area (allocated) for livestock, with the difference that the nets fence in a water area (that in principle might not be allocated).

aquaculture. It seems possible to apply over a lagoon the same principles followed for creating exclusive/individual use-zones in marine areas. (see below Chapter 3)

4. RIGHTS OVER THE LAND AREA

The State hands over land use rights to land users in the form of allocation, lease of land, and recognition of land use rights of land users who are using land stably; it also stipulates rights and obligations of land users (Article 5, Land Law).

Article 6 of Decree 181/2004/ND-CP of October 29, 2004 on the implementation of the Land Law, categorizes land in groups:

agricultural land group: it includes agricultural production land, forestry land (production, protective and special use), aquaculture land, salt-making land and other agricultural land;

non-agricultural land group: it is divided the sub-groups of residential land; special-use land (land for construction of working offices or land for public purposes, e.g.); land with rivers, arroyos, canals, stream and other special-use water surface; and other non-agricultural land;

unused land group: it includes unused delta land, unused hilly and mountain land, and rock mountains without forest.

Then, Article 9 of Land Law defines the land users including: domestic organizations¹⁶, households, individuals, and residential communities¹⁷ (and others users).

People's Committees of provinces decide on allocation, lease of land, and on the permission to change land use purpose, to organizations; People's Committees of districts make decisions on allocation, lease of land, and permission of change of land use purpose, to resident communities (Article 37, Land Law).

The general rights of land users are established in Article 105 of the Land Law. Land users have the right to be granted certificates of land use rights; benefit from the results of their labour and investment on the land; enjoy the benefits derived from construction facilities of the State in relation to the agricultural land protection and improvement; receive state guidelines and assistance in the process of improvement and fertilization of the agricultural land; enjoy the state protection against infringement upon their legitimate land use rights; and file petitions, denounce and bring a legal action against breaches of their legitimate land use rights and other breaches of the laws on land.

Whereas, Article 106 of the Land Law provides the specific rights of land users: rights to exchange, assign, lease, sub-lease, inherit, make gifts of land use rights; mortgage, guarantee and making capital contribution in the value of land use rights.

But, such specific rights can be exercised only if specific conditions are met: land users have the land use certificates; land is not subject to any dispute; land use rights are not

¹⁶ These include state agencies, political organizations, socio-political organizations, political-socio-professional organizations, social organizations, socio-professional organizations, economic organizations, socio-economic organizations, public service organizations, units of the people's armed forces and other organizations as may be stipulated by the Government.

¹⁷ Note that the resident communities to which agricultural land is allocated must use land for the purpose of combination of agricultural and aqua cultural production, but not for other purposes (Article 71, Land Law).

confiscated to ensure the enforcement of the court's judgment and/or decision; and they are exercised within the land use term.

To note that these rights are specified from Article 109 to Article 116 of the Land Law, and in particular the regime establishes different categories of rights in case of individuals, households, organizations or economic organizations.

4.1. ALLOCATION OF LAND

Article 33 of the Land Law sets forth that the State shall allocate land without collecting land use fees from households and individuals directly engaged in activities of agriculture, forestry, aquaculture or salt production to which agricultural land is allocated within the area limits stipulated in article 70 of the law..

In case of:

- land for cultivation of annual crops, aqua cultural cultivation and breeding or salt production allocated to each household or individual, area limit cannot exceed 3 hectares for each category of land;
- land for the cultivation of perennial trees allocated to each household or individual, area limit cannot exceed 10 hectares in respect of communes, wards and towns in flat areas; and cannot exceed 30 hectares in respect of communes, wards and towns in mountainous areas;
- production forestry land and protective forestry land allocated to each household or individual, area limit cannot exceed 30 hectares for each category of land.

In case where a household or individual is allocated different categories of land, Article 70 provides for other area limits.

Furthermore, the Government provides guidelines on detailed area limits for each land category in each locality.

On the other hand, the State collects land use fees in the case of land allocated to economic organizations¹⁸ for agriculture, forestry, aquaculture or salt production (Article 34, Land Law). However, economic organizations can select the form of the land allocation with the collection of the land use fee or rent (Article 108, Land Law).

4.2. LEASE OF LAND

The State leases land with annual rental payment in the following cases (Article 35, Land Law):

- households and individuals who lease land for the purpose of agriculture, forestry, aquaculture or salt production;
- households and individuals who have demands to continue using agricultural land area exceeding the land allocation limit which has been allocated before January 1st 1999 but the use time has been expired;
- households or individuals who has been using agricultural land exceeding land allocation limit from before 01 January 1999 to 30 June 2004
- economic organizations who lease land for implementing investment projects of agriculture, forestry, aquaculture or salt production.

¹⁸ Economic organizations are juridical persons such as State enterprise, co-operative, limited liability company, joint-stock company, enterprises with foreign investment capital; they must have a charter approved by the competent State authority; and they bear civil liability with their own property (Article 113, Civil Code).

4.3. LAND USE TERM

The legislative framework regulates that land users have the right to use land on a stable and long term basis in case of protective forestry land, and specialized forestry land; and in case of agricultural land used by resident communities (Article 66, Land Law).

Whereas land users have the rights to use land within a specific use term (Article 67, Land Law) as following:

- the term of allocation of land for cultivation of annual crops, aquaculture or salt production to households or individuals is 20 years; term of allocation of land for cultivation of long term crops and production forest land to households or individuals is 50 years;
- the term of lease of land to households or individuals for cultivation of annual crops, aquatic cultivation or breeding or salt production cannot exceed 20 years; the term of lease of land for cultivation of long term crops and production forest land to households or individuals cannot exceed 50 years;
- the term of allocation and lease of land to economic organizations for the purpose of agricultural, forestry, aqua cultural or salt production in any case cannot exceed 50 years.

4.4. CHANGE OF LAND USE PURPOSE

Land users can apply to the state competent agency for approval of land use purpose change in the following cases (Article 36 of Land Law):

- land for wet rice cultivation to land for cultivation of perennial trees, land for forestry cultivation and land for aqua cultural cultivation and breeding;
- specialized forest land and protective forest land to be used for other purposes;
- agricultural land into non-agricultural land;
- non-agricultural land which has been allocated without the collection of land use fees by the State to non-agricultural land which is allocated with the collection of land use fees by the State;
- non-agricultural land which is not residential land into residential land.

In the case of change of purpose of land use, different from the above mentioned, the land user do not apply to the competent state authorities for approval, but register with the office of the organization which has the authority for registration of land use rights or the People's Committee of the commune where the land is located.

However, in the case of change of purpose of land use, rights and obligations of the land user are applied following the type of land after changing of purpose.

4.5. LAND USE CERTIFICATES

Land use certificates should be granted to land users in a uniform form throughout the country for all categories of land (and for each land field), issued by the Ministry of Natural Resources and Environment.

Then People's Committees at district level grant land use certificates in the following cases:

- any person to whom the State allocates or leases land;
- any person to whom the State allocates or leases from October 15, 1993 before 30 June 2004 but has not been granted a land use right certificate;
- households and individuals using land stably and not involving in any land disputes, and in possession of specific documents (indicated in Article 50 of Land Law) but has not been granted a land use right certificate, should be granted the land use right certificate without the collection of land use fees;
- any person who acquires land use rights by the exchange, assignment, inheritance or gift of such land use rights;

- any person who uses land by virtue of a judgment or decision of the People's Court, or a decision for execution of a judgment issued by the judgment execution agencies, or a decision for settlement of land dispute issued by the competent state authorities;
- any person who wins land use rights from an auction or bid of projects using land;

In case where a land lot is used by a number of individuals, households or organizations, land use right certificate should be granted to each of such individuals, households or organizations, which have the right to jointly use the land lot.

In case where a land lot is under the common use rights of the resident community, the land use right certificate shall be granted to the resident community and handover to the legal representative of such resident community.

With respect to organizations, it is important to note that Decree 181/2004/ND-CP (on the implementation of Land Law) excludes them to be granted the land use certificate in the case they "are assigned to manage land with surface water of big rivers and land with special-use water surface"(Article 3 and Article 41).

5. RIGHTS OVER THE SPECIAL-USE WATER SURFACE

Special-use water surface area (as defined in Chapter 1 of this study), due to the inclusion within the non-agricultural land in Land Law and in the implementing Decree 181/2004/ND-CP, is regulated by the respective relevant parts of these legislative documents.

Thus, refer to what described in Paragraph 4 of this Chapter.

CHAPTER 3

REGULATED ACTIVITIES IN THE LAGOON

1. FISHERIES ACTIVITIES, AS REGULATED AT NATIONAL LEVEL

The Fisheries Law (Law No.17/2003/QH 11) provides the fundamental regulation on fisheries activities (capture fisheries and aquaculture) carried on by organizations, households and individuals.

In general, this Law regulates fisheries activities stating principles for a sustainable fisheries development¹⁹, and referring to financial sources for rehabilitation of fisheries resources.

The Fisheries Law prohibits some activities, both for capture of fisheries and aquaculture; it provides a regime of fishing license for capture; and, with respect to aquaculture, it refers to national and provincial plans regarding the aquaculture development.

The prohibited activities in fisheries activities are stated in Article 6, as follows:

- the illegal exploitation and destruction of aquatic habitats; the illegal destruction and interference with the natural movement path of fish species living in rivers and lagoons;
- the exploitation of fish species under the prohibited lists including the time-limited prohibition lists except for scientific research purposes allowed by the Government; the exploitation of fish with smaller size than regulated, except for cases allowed for aquaculture purposes;
- the breach of regulations set out by law on environmental protection regarding the aquatic habitats²⁰;
- the fishing operations conducted in closed areas, areas during closed time; and the over-fishing;
- the production, circulation, usage of prohibited fishing gear; the use of prohibited fishery activities and methods; the use of explosives, poisons, electric and other destructive fishing methods;
- the use of fishing gear that obstruct, interfere with or cause damages to the fishing organizations; the anchorage or stopping of fishing vessels at a place where fishing gear of other organizations and individuals exists or where the other fishing vessels are showing signal of fishing, except for force-majeure;
- abandonment of fishing gear in natural waters; except for force-majeure;
- violation of regulations relating to master plan on aquaculture development;
- the conduct of new aquaculture activities without permission of Ministry of Fisheries;
- the conduct of aquaculture that is inconsistent with master plan and obstruct the flows, interfere with fishing operations and cause adverse impact on the activities of other sectors and occupations;
- the use of drugs, additives, chemicals under the prohibited list for aquaculture.

¹⁹ As a principle in general, fisheries activities must ensure the economic effectiveness in accordance with the protection, rehabilitation and development of fisheries resources and biodiversity; and they must protect environment and natural landscape (Article 4).

²⁰ For example, Government's Decree No. 109/2003/ND-CP of September 23, 2003 on Conservation and Sustainable Development of Submerged Areas.

The administrative violations in the aquatic resource domain (aquatic resource protection, aquatic resource exploitation, and aquaculture) are regulated by the Decree No.70/2003/ND-CP of June 17, 2003 stipulating the sanctioning of administrative violations in the aquatic resource domain.

Another relevant document at national level is the Decision No.07/2005/QĐ-BTS of February 24, 2005 promulgating the lists of chemicals and antibiotics, which are banned or restricted from use in fisheries production and business.

1.1. Capture of fisheries resources

In addition to the just mentioned banned activities, in order to protect and develop fisheries resources "organizations and individuals are responsible for the protection of aquatic habitat... and while fishing by setting barriers, set nets in rivers, lakes, lagoons [organizations and individuals] have to spend a corridor areas for the movement of fisheries resources as regulated by local People's Committees" (Article 7).

Furthermore, it must be ensured that fishing operations conducted in, *inter alia*, lagoons, do not lead to the depletion of fisheries resources and be done in compliance with regulations relating to fishing seasons, fishing time, fishing grounds, permitted types and sizes, and annual allowable catch, fishing gears and fishing vessels (Article 11).

The Ministry of Fisheries has the competence to make regulations regarding these issues, but in case of necessity, and with the approval of the Ministry of Fisheries, the People's Committees of provinces might proclaim the supplement to these regulations to make them compatible with practical fishing operations in their provinces (Article 8).

Furthermore, as stipulated in Article 15, the provincial People's Committees have the "responsibility to issue rules of fishing grounds in rivers, lakes, lagoons and other natural waters under its jurisdiction in accordance with guidance of Ministry of Fisheries".

1.2. Fishing license

In general, by Article 16, organizations and individuals engaged in fisheries operations should hold fishing licenses except the individuals fishing by fishing vessels with tonnage smaller than 0,5 tons or not using fishing vessels.

In principle, the reference to "fisheries operations" entails the extent of this regime over a lagoon area too, since that fisheries operations must be understood as "capture of fisheries resources at ...lagoons" (as stated in Article 2, Fisheries Law), and given that in Thua Thien Hué lagoon fishermen fish by fishing vessels with tonnage either bigger and smaller.

But, the terms "organizations" and "individuals" must be understood in accordance with the next Article 17, stating the conditions for granting fishing license. In particular, organizations and individuals are granted fishing licenses if they "register the fishing trade"²¹.

As a consequence, only "economic organizations" (and individuals engaged in commercial fisheries operations) are granted fishing license. And it means that small-scale fishermen, the most conspicuous part of the users of the lagoon water surface, are excluded from this system of certification.

The fishing license includes conditions related to types of fishery; type of fishing gear; allowable fishing grounds and routes; fishing time; duration of fishing license; and other necessary contents as provided for by legislation (Article 16).

²¹ The other conditions to be met are: they must have registered and inspected fishing vessels; they must have proper fishing gear and devices; and the masters and operators on board must possess proper degrees and certificates as set out by legislation.

The content of fishing license is also the statement of some of the rights and obligations that Fisheries Law specifically establishes only for those who are granted licenses. And so, these specific rights and obligations do not concern small-scale fishermen. These rights are (Article 20): to fish as stated in fishing license; to be informed of weather development, fisheries resources state, fisheries activities, fish marketing; to be provided with fishing technique by specialized agencies; and other rights as provided for by legislation. Furthermore, their legal rights and interests based on their produce and investment in fishing must be protected by the State.

The obligations of organizations and individuals engaged in fishing operations are (Article 21): to comply with regulations as stated in fishing license; to pay taxes, fees and charges as stated by legislation; to mark fishing gear which are being used in fishing grounds by easily-recognizable markings as regulated by Ministry of Fisheries; to be subject to the control and investigation of competent functionary agencies and forces as regulated by legislation; to take part in rescue of human and fishing vessels at distress; to comply with regulations relating to the management of fishing grounds, the maintenance of the security and order in fishing grounds; to detect, prosecute and prevent the violations committed to fisheries legislation; and to comply with other obligations as set out by legislation.

1.3. Aquaculture

The Fisheries Law regulates aquaculture activities carried on by organizations and individuals in two different ways: aquaculture land and aquaculture in marine areas.

First of all, in contrast to the regulation on the capture of fisheries resources and fishing licenses (*see the Paragraph above*), it seems appropriate to consider "organizations" and "individuals" in this case as referring to any kind of organizations and individuals, given that no references to economic purpose of the activities are noticeable.

As a consequence, also small-scale fishermen might be considered included in this regime.

Secondly, even if this Law takes in consideration only marine areas for aquaculture, so excluding lagoon areas, however it seems appropriate to discuss the extent of this regulation given the existence of many similarities among the techniques utilised for aquaculture activities (floating cages or net-enclosures) both in marine and lagoon areas.

Therefore, the principles at the base of this ruling might be considered at least suggestive for further specific regulations of the lagoon area.

Then, Fisheries Law establishes the authorities for formulating the provincial plans for aquaculture development, and for aquaculture sites (Article 23).

In particular, on the basis of nationwide master plans approved by the Government, specific master plans formulated by the Provincial People's Committees, and plans regarding the aquaculture development issued by provinces, the People's Committees at lower levels prepare specific master plan on aquaculture site within their jurisdiction (to present to People's Councils at the same levels for adoption and to report to People's Committees at the direct higher level).

Furthermore, the Ministry of Fisheries issues standards, process and procedures of aquaculture sites; chairs the coordination with relevant Ministries and ministerial-level agencies, provincial People's Committees to provide guidance, examination and recognition of qualified aquaculture sites conducted by means of semi-intensive and intensive methods that meet the food hygiene and safety standards (Article 24).

Other relevant legislation that have influence in regulating aquaculture activities is provided for in:

- Decision numbered 04/2002/QD-BTS dated January 24, 2002 by the Ministry of Fisheries;
- Ministry of Fisheries, Decision numbered 03/2002/QD-BTS dated January 23, 2002 on Regulations on the management of medicine for fisheries species;

- List of forbidden types of medicines and chemicals used and traded in shrimp culture by the Ministry of Fisheries as stated in Decision numbered 07/2005/QĐ-BTS dated February 23, 2005; and to the list of forbidden types updated each year by MOFI.

1.3.1. Aquaculture land

Article 27 of Fisheries Law clearly refers to Land Law for the allocation, lease and revocation of aquaculture land (*see above, Chapter 2, Paragraph 4*).

However, Fisheries Law establishes further specific rights and obligations.

In particular, organizations and individuals shall “enjoy the advocacy, training and transfer of new techniques on aquaculture, new fish fry production, the prevention and detection of fish diseases, should be informed of environment and fish disease status as well as fish marketing by fisheries specialized agencies” (Article 25).

And as obligations: organizations and individuals have to “report on aquaculture statistics as laid down by legislation on statistics” and “comply with regulations relating to environmental protection” (Article 26).

It is important to note that, by this Law, “aquaculture land” includes “non-agricultural land with water surface”. It means that “aquaculture land” includes the “special-use water surface” (the one in between the wet and dry areas of the lagoon).

By contrast, by Land Law, “aquaculture land” is included in the “agricultural land group”, and the “special-use water surface” is included in the “non-agricultural land group”.

And so, combining these two regulations, the contradictory result would be to include a “non-agricultural land” (the special-use water surface) in the “agricultural land group”.

But the most important consequence is that the regime regulating agricultural land, as provided for in Land Law, might be extended over non-agricultural land by a different Law, the Fisheries Law.

1.3.2 Marine areas for aquaculture

Following the above mentioned considerations (*see Paragraph 1.3.*), only the allocation of marine areas for aquaculture, and the concerning rights and obligations of organizations and individuals, will be discussed²².

The allocation of marine areas should be done in accordance with the master plan on aquaculture development.

By Article 28, the People’s Committees of districts and communes allocates marine areas free of charge to local residents who directly conduct aquaculture and whose livelihood mainly depends on income derived from aquaculture, as certified by local commune’s People’s Committees, or those who have to shift their job structure among capture fisheries, aquaculture, fish processing, plantation and services, because of issued State policies regarding the reorganization of production, job alternatives or job structures.

The duration of allocation of marine areas should not exceed 20 years. Upon the termination, if users wish to continue to use these areas and the State does not revoke this right, the right should be renewed in accordance with a new allocation decision.

Then, rights and obligations are equal to those established for aquaculture land users by the Fisheries Law.

The rights are: to be protected by the State when others violate their legal rights to use marine areas for aquaculture purposes; to be compensated when the State revoke these

²² Note that Fisheries Law regulates also the lease of marine areas for aquaculture, but referring to organizations and individuals (Vietnamese and foreign) who use marine areas in accordance with projects approved by State competent agencies. And these are outside of the object of this study.

areas for public, security and national defense purposes prior to the termination of allocation duration; to enjoy the advocacy, training and transfer of new techniques on aquaculture, new fish fry production, the prevention and detection of fish diseases, and to be informed of environment and fish disease status as well as fish marketing by fisheries specialized agencies (Article 25).

The obligations are: to effectively use marine areas allocated with the right purposes; to comply with their financial obligations regarding the use marine areas; to report on aquaculture statistics as laid down by legislation on statistics; to return the marine areas when withdrawal decision is made pursuant to legislation; and to comply with regulations relating to environmental protection.

2. REGULATION OF FISHERIES ACTIVITIES AND AQUACULTURE IN THUA THIEN HUÉ PROVINCE

The fundamental regulations at provincial level that have influence on resource management of the lagoon system in Thua Thien Hué province consist of 3 legal texts:

- Decision of the Provincial People's Committee No.3677/QD-UB dated October 25, 2004 approving the overall planning for the management and exploitation of fishery resources on the lagoon system of Thua Thien Hué province towards 2010 (*see Annex 1*);
- Regulations on the management of lagoon fisheries in Thua Thien Hué, promulgated following the Decision No.4260/2005/QD-UBND dated December 19th, 2005 by the People's Committee of Thua Thien Hué Province (*see Annex 2*);
- Regulations on the environmental management of centralized shrimp culture areas in Thua Thien Hué province, promulgated following the Decision No.3014/2005/QD-UBND dated December 19, 2005 by the People's Committee of Thua Thien Hué province (*see Annex 3*).

2.1. Overall planning

The content of the overall planning is to reduce the fishery resources exploitation towards 2010 by 30%, specifically reducing the number and density of fishing tools, creating a system of fishing and aquaculture permits, periodically banning the exploitation²³, and increasing the minimal mesh size of the nets.

The overall planning divides the lagoon in 3 parts: extremely sensible, sensible and normal.

With respect to all of them, it is provided for that illegal aquaculture ponds (to be understood as the ponds without permission build over the special-use water surface area will be razed.

With reference to:

- extremely sensible area: only short-term (1 year) fishing permits will be issued whereas area extension of shrimp culture will be forbidden;
- sensible area: only mid-term fishing permits (5 year) will be issued and area extension of shrimp culture will be forbidden;
- normal area: long-term fishing permits (10 years) will be issued.

It is important to note that small-scale fisheries activities will be allowed with any kind of permit.

Using explosives, electric drag nets, trawlers, eels screening nets for fishing is specifically forbidden.

²³ The exploitation of fisheries resources by fish corrals is banned for 3 months per year starting on January 2008 (and at least till 2010, given the same time extent of the plan).

Furthermore, this planning establishes some responsibilities for the People's Committees at district level: specifically, they "cannot issue land use certificates on land sites located near the lagoon that make the lagoon shallower and degraded"²⁴. The reference here is to the land in between wet and dry area where aquaculture ponds are built.

The overall planning takes in consideration the system of community-based fisheries management.

Firstly, it states that Fishermen's organizations at all levels under the Vietnamese Fishery Association will be the major partners of authorities in the co-management of the fishery exploitation, in order to reduce the management expense for the authorities, and to enhance democracy at grass-root level among fishermen's organizations in self-managing fishing territory, fishery resources, aquatic environment (and other related fields such as water traffic, flood and storms mitigation, rescue and relief works).

Then, it establishes that People's Committees is responsible for cooperating with the fishery sector to implement the system of fishery exploitation certificate permits for effectively managing and appropriately use the lagoon fisheries resources.

As well as provincial Departments and agencies, on the basis of the overall planning, are responsible for implementing the co-management on fields related to production and development of fishery resources, and for guaranteeing the integrated management of the lagoon and coastal areas.

To bear in mind that the overall planning has a programmatic effectiveness. It is not an overt act, so its general content needs to be specified in further legislative texts. And the Regulations on the management of lagoon fisheries (*see next Paragraph*) are an example of this.

2.2. Regulations on the management of lagoon fisheries

Based on the above mentioned overall planning, from an environmental point of view, the Regulations reaffirms that the management of the lagoon fisheries should be based on the principle of ensuring sustainable development for capture fisheries; and that it is closely linked with the protection of environment and aquatic resources on the basis of ensuring the lagoon people's livelihood and economic benefits of the whole society.

Then, the Regulations affirms that "to promote democracy at grassroots level and decentralization and to reduce the management cost of coastal fisheries, the State encourages the community-based fisheries management".

2.2.1. Fisheries Associations as socio-professional organizations

The most important (and interesting) part of the content of these Regulations refers to "Fisheries Association".

Such associations at the grassroots level are specifically considered as "social and professional organizations" (Article 4).

²⁴ "The boundary between the water surface and the inland is identified by the topography map published in 1994 by the National Administration of land-related issues" (Article 2, paragraph 2 of the Overall Planning).

Following Article 114 of the Civil Code, a socio-professional organization is a juridical person in civil relations (i.e. it is capable to have civil rights and obligations²⁵ which are consistent with its own purpose of operation) when:

- it is permitted to be established and its charter is approved by the competent State authority;
- its members are individuals or organisations voluntarily contributing property or membership fees for the purpose of supporting the common needs of the members and purpose of the association.

A socio-professional organisation bears civil liability with its own property. It means that not only it may have civil rights but also that it must strictly perform its own civil obligations and be liable itself .(*)

()for the non-performance or the improper performance of the obligations. It also means that if it does not perform voluntarily, it may be forced to perform in accordance with the provisions of law (Article 10, Civil Code).*

And so single member cannot bear civil liability with his/her own property for the performance of civil obligations of the socio-professional organisation.

It is important to bear in mind that, in circumstances where the socio-professional organisation terminates operations, the property of the organisation is not distributed to its members but [it] must be settled in accordance with the provisions of law (Article 144, Civil Code).

Furthermore, social-professional organizations, as juridical persons, may consolidate with other socio-professional organizations to form a new juridical person, in accordance with the decision of the competent State authority or in accordance with the agreement of such juridical persons. After consolidation, the former juridical persons terminate; and, civil rights and obligations are transferred to the new juridical person (Article 104, Civil Code).

Similarly, a juridical person may be merged into another juridical person of the same type, divided or split up into many juridical persons (Articles 105 and 106, Civil Code).

To note that, by these Regulations, fisheries associations are under the Vietnamese Fisheries Society (VINAFIS); they operate under the leadership of the Communist Party²⁶ and authority of the communes; they are sponsored by the Department of Fisheries and Districts' Offices of Agriculture and Rural Development and professionally instructed by the higher Fisheries Associations (Article 4).

2.2.2. Membership

Article 3 of Regulations establishes that individuals and households participating in lagoon fisheries can organize themselves in fisheries associations at village, intra-villages and commune levels²⁷.

²⁵ Civil rights and obligations may be established from: lawful civil transactions; decisions of a court or other competent State authority; legal incidents which are stipulated by law; the creation of intangible value which is the subject of intellectual property ownership rights; the possession of property with a legal basis; causing damage through acts contrary to law; the performance of works without authorisation; the possession or use of property or gain of property without a legal basis; [and/or] other bases which are stipulated by law (by Article 13, Civil Code).

²⁶ To note that the Vietnamese legal system provides a different regime for "socio-political organizations" (Article 112, Civil Code).

²⁷ To note that following literally this disposition a fisheries association between two or more communes might be considered not allowed.

With respect to this, it is important to note that, even if there is not reference in the Regulations to organizations (such as cooperatives, e.g.) among the possible members of fisheries associations, it seems possible instead to include them given their allowed membership in socio-professional organizations, as provided for by the Civil Code.

And, it seems appropriate to consider as eligible for membership fishermen carrying on both capture fisheries and aquaculture in the water surface (net-enclosures and fish cages). Indeed, this is possible combining Article 3, that refers only in general terms to "lagoon fisheries", and Article 34 that considers "net-enclosures and rearing cages for aquatic resources" as possible object of the fishing rights of the fisheries associations ("net-enclosures and rearing cages for aquatic resources... should be clearly stated in the fishing rights of the fisheries associations").

As a consequence, it seems that aqua culturists carrying on their activity in aquaculture ponds (over the special-use water surface area or land area) are excluded from membership in the Associations (*see below Paragraph 2.3.*).

2.2.3. Delegation of management

In the Regulations is provided for that the State delegates the management of fisheries resources in certain areas of lagoon to fisheries associations at the grassroots level.

On this basis fisheries associations properly and creatively regulate the fisheries activities of their members (ensuring the harmony among members and between members and associations and the whole society).

In particular, fisheries associations can take the initiative in arranging the fishing grounds while maintaining the traditional fishing grounds of individuals and households in line with the general planning of the State and the benefit of the community.

Furthermore, fisheries associations have to act as management agencies on behalf of government agencies at all levels in the fields of lagoon fisheries tax, management and protection of aquatic resources, management of the aquatic environment and transportation through the fishing grounds, etc.

Taxes on aquatic resources exploitation in the lagoon fully contribute to the commune budgets. People's Committees of the communes define the percentage of taxes that is left for fisheries associations at the local levels so to cover the expenses of taxes collection in the community, management, organization and implementation of aquatic resources protection and development activities.

Fisheries associations are also responsible for resolving conflicts about fishing grounds and resources among individuals and/or household members. Only when conflict resolution fails the authorities intervene (Article 8).

2.2.4. Fishing rights

With the purpose of implementing the general dispositions of the overall planning (*see Paragraph 2.1. in this Chapter*), the Regulations states that People's Committees at district level issue fishing rights to fisheries associations (at village and commune levels) over certain water bodies, in their designated area, and based on the quantity and types of fishing gear, fishing seasons and aquatic species (Article 13).

It can be noted that by these Regulations, the fishing rights include also some responsibilities: to timely prevent acts of fishery law violation, responsibilities of protecting fishing grounds, developing aquatic resources, ensuring free access to water ways, preventing degradation of the water environment and ensuring submission of taxes to the State. And the State encourages fisheries associations to develop self-management rules aimed to fulfil these responsibilities.

As members of a fisheries association, fishermen using fixed fishing gears can locate their nets only within the designated water area of their association. However, they have to maintain corridors, for aquatic species to move. Fishermen using mobile fishing gears are

allowed to carry out their activity in “adjacent areas” (to be understood as adjacent to fixed fishing gears), but they are not allowed to disturb the fixed fishing gear (Article 14).

Fisheries associations are granted the fishing right for a period of 10 years in normal water bodies and 5 years in sensible water bodies. In extremely sensible water bodies, the District People’s Committee annually grants the fishing rights or authorizes the Commune People’s Committees to carry out an annual auction for this exploitation (Article 18).

People’s Committees at district level are entitled to annul, cancel and revoke these rights, over the whole or over some parts of the allocated water bodies, in the following cases (Article 19):

- the fisheries association does not exist any more;
- the fisheries association voluntarily returns the allocated water bodies;
- the term of use of the allocated water bodies has expired;
- the fisheries association does not fish, protect the aquatic resources or abuse the resources without the permission of concerned agencies;
- the fisheries associations seriously violate the law on fisheries management or other laws;
- the term of use of fishing rights has not expired but the State needs to allocated water bodies for socio-economic development.

As already stated in the overall planning, sports and recreational fisheries and small-scale fisheries (including hand-line fishery, fishing-tackle, casting-net fishing, gill net fishery with the net’s length less than 50 m, fishing with pots, oyster raking, crab and snail hand-catching) can freely use the lagoon areas, and they are not included in the fishing rights regime.

However, these activities cannot disturb the fishing gear registered by the local fisheries associations (Article 21).

Finally, within the framework of their associations, members can create forms of voluntary fisheries economic cooperation in the community such as: credit, savings, fisheries product processing and sale, material supply, etc (Article 9).

2.2.5. Banned activities

The Regulations strictly forbids:

- fishing by boats with a machine capacity of more than 16.5 HP.
- using poisonous chemicals, explosives, electricity to exploit fisheries resources;
- discharging garbage, letting pollutants and toxic substances leak beyond the limit;
- using such gear as push net, trawler, eel rake, stick net, drag net, mussel rake when fishing by motor-boat;
- destroying mangrove forests, reefs and other special biological landscapes;
- discharging diseased fisheries species into the fishing farms or into the lagoon water bodies;
- building, destroying or changing construction works in the lagoon water bodies without the authorization of concerned authorities and thus causing great damage to aquatic resources;
- catch and selling aquatic resources of high economic value, rarity or in danger of extinction stated in the list of the protected species according to the State regulations.

The Regulations take also in consideration the possibility to determine non-fishing areas, where exploitation would be forbidden for a long-term or short-term period. But their identification depends on further researches and proposals that the Department of Fisheries is responsible for.

With respect to these areas, fisheries associations are encouraged to develop their own rules to protect small areas used for reproduction, development and conservation of aquatic resources in the water bodies they administer. From another point of view, it is like they have the right to identify such areas.

Finally, the Regulations provide for indicative limits about the construction of “fish passes”, buffer zone of irrigational dikes, distance between the nets, and mesh-size. For a clear understanding refer to Article 26-31 of the Regulations (*Annex 2*).

2.3. Regulations on centralized shrimp culture area

This Regulation (see annex 3) deal with the environmental management of centralized shrimp culture areas in Thua Thien Hué lagoon, carried on by organizations or individuals²⁸ (hereafter called shrimp culturists), with the aim of sustainable development of shrimp culture.

Article 3 defines centralized shrimp culture area as any area over 20 ha of extension, with independent, either completely or partially, infrastructure facilities as for traffic ways, water treatment system, etc.

Then Regulations distinguish between low tide and high tide shrimp culture areas.

The former are referred to as areas of intensive or extensive shrimp culture, permanent or impermanent submerged, along the lagoon coast where the pond cannot be dried with technical procedures. Usually the low tide shrimp culture area is the lagoon water surface beyond the saline prevention dam or beyond the fields on the lagoon coast.

Whereas, the high tide areas are non-submerged area, of intensive or extensive shrimp culture, on lagoon coast where the pond can be dried with technical procedures. Usually the high tide shrimp culture area is the area on the lagoon coast inside the saline prevention dam, or the area on the lagoon dunes, or the coast sand soil area.

In addition to compliance required by Article 5 of the Regulation issued following the Decision numbered 04/2002/QD-BTS dated January 24, 2002 by the Ministry of Fisheries, these Regulations state that shrimp ponds must meet the following requirements:

- the building of shrimp pond must comply with general planning of the province or districts and with detailed planning of the commune (if any);
- there must be a water treatment system²⁹;
- the building of shrimp pond must be restricted to the water surface area allocated, without any extension or transgression or misuse for other purposes.

In order to protect the environment in centralized shrimp culture areas, Articles 6 and 7 provide for specific regulations on shrimp seed, density of shrimp seed, feed, medicines and antibiotics, sanitation treatment, transportation.

Furthermore, the establishment of shrimp culture cooperatives and cooperative groups is encouraged for organizing and managing the production. In any case, it is stated that shrimp culturists “must organize themselves in “self-management groups” (Article 8).

It is interesting to note that by these Regulations low and high tide shrimp culturists are mainly encouraged to organize themselves in cooperatives (economic organizations), whereas fishermen (capture and in-water aquaculture) are encouraged to create Fisheries Associations (socio-professional organizations). And it is important to bear in mind that members of cooperatives are only individuals (Article 121, Civil Code), whereas members of socio-professional organizations can be individuals and/or organizations (Article 114, Civil Code).

²⁸ Note that Article 2 of the Regulations refers to both “shrimp culture organizations or individuals” and “other organizations or individuals involved environmentally in shrimp culture”. Such references seem to be intended to include anyone involved in shrimp culture, as the main or secondary activity.

²⁹ Water treatment system includes water storage pond, for containing and cleaning water before supplying ponds; waste matters pond for reduce pollutants before discharging (Article 3).

These Regulations also state responsibilities of cooperatives, cooperative groups and self-management groups, as follows (Article 13):

- disseminating to shrimp culturists and organizing the implementation of these Regulations;
- developing their own specific rules on environmental management of centralized shrimp culture area;
- organizing the fund collection for environmental protection in centralized shrimp culture areas;
- communicating information on shrimp culture situation, environmental changes and epidemics signs in shrimp ponds; facilitating the working conditions for functional relevant agencies when required; and working closely with relevant agencies in handling environmental issues and shrimp epidemics;
- working closely with relevant agencies for the extension of waterway systems;
- timely reporting and suggesting proper approaches to handle cases of violation in the localities.

Whereas, Article 12 states responsibilities of single shrimp culturist:

- fully and faithfully reporting on environmental and epidemics issues to technical staff and functional agencies;
- timely preventing and, in case of violation, communicating to functional agencies;
- in case of epidemics, working closely with functional agencies to find proper solutions and reduce damages.

Finally, Regulations provide for responsibilities of Department of Fisheries (Article 9), People's Committees at district level (Article 10), and People's Committees at commune level (Article 11).

THE PPC OF
VIETNAM

THUA THIEN HUE PROVINCE
No. 3677/QD-UB

SOCIALIST REPUBLIC OF

Independence-Freedom-Happiness
Hue, October 25, 2004,

DECISION OF THE PROVINCIAL PEOPLE'S COMMITTEE

Approval of the overall planning for the management and exploitation of fishery resources on the lagoon system of Thua Thien Hue province towards 2010

THE PROVINCIAL PEOPLE'S COMMITTEE OF TTH PROVINCE

- Pursuant to the Law on the provincial council and committee organization dated November 26, 2003;
- Pursuant to the Decision No. 1198/QD-UB dated May 7, 2003 of the provincial People's Committee approving the outline and budget estimation for the overall planning of the management and exploitation of fishery resources on the lagoon system of Thua Thien Hue province;
- Pursuant to the conclusions of the provincial People's Council at the Announcement No. 22/TB-UB dated March 2, 2004 on the project for the management and exploitation of fishery resources on the lagoon system of Thua Thien Hue province;
- In recommendations of the Petition No. 382/KT dated October 15 of the Director of DOFI in application for the approval of the overall planning for the management and exploitation of fishery resources on the lagoon system of Thua Thien Hue province,

hereby DECIDES

Article 1: To approve the overall planning for the management and exploitation of fishery resources on the lagoon system of Thua Thien Hue province towards 2010 with the following contents:

1. New subjects (labourers, boats, fishing tools) are not allowed to freely participate in the exploitation of fishery resources on the lagoon system. The fishery resources exploitation capacity towards 2010 is reduced by 30% in comparison to that of present time, specifically:

- Reduce by 40% of the number, density of fishing tools equivalent to 40% of capacity
- Reduce by 25% of exploitation timing due to the ban on exploitation for 3 months in a year, equivalent to 15% of capacity
- Reduce by 25% of small individuals to be tapped due to the regulation on the increasing of the minimal mesh size, equivalent to 15% capacity

2. Hereunder is the planning on the reduction of the number of lagoon exploitation careers by administrative units:

Careers	Phong Dien	Quang Dien	Huong Tra	Phu Vang	Phu Loc
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	Number	%	Number	%	Number	%	Number	%	Number	%
Đặng (Fish corrals)	38	6	151	23.7	29	4.6	171	26.8	248	38.9
Đáy	0	0	49	11.4	46	10.7	260	60.5	75	17.4

3. Approach to fishery exploitation tools management:

Timing	Major decisions
From January 1, 2006	<ul style="list-style-type: none"> - All exploitation (capture) and aquaculture (water surface activities) should have permission certificates - The minimal mesh size 2a is regulated as follows: <ul style="list-style-type: none"> + Đặng (natural fishing gears): 10 mm + Đáy: 14 mm - All parts of Đáy and Sáo located on the circulation of water traffic should be removed
From January 1, 2008	<ul style="list-style-type: none"> - Fishing gear (fish corrals) exploitation is banned for 3 months - The minimal mesh size 2a is regulated as follows: <ul style="list-style-type: none"> + Đặng (natural fishing gears): 18 mm + Đáy: 18 mm - Complete the arrangement of the corridor for protecting boats' circulation - Reduce the number/density of the fishing gears (fish corrals) by 1/2 of that at present.

4. Zoning of fishery resources management and exploitation:

Zoning	Administration units	Necessary administration regulations
Extremely sensible zone	Quang Thai, Thuan An, Phu An, Phu Xuan, Vinh Ha	<ul style="list-style-type: none"> - Only issue short-term fishing certificate permits annually - Shrimp farming area extension permits will not be issued in the future - Impose enforcement (Clear) on transgressing ponds without permits - permit time extension will not be issued to transgressing ponds
Sensible	Dien Hoa, Dien Hai, Quang Loi, Huong Phong, Hai Duong, Phu My, Phu Thuan, Vinh Hung, Vinh Giang, Loc Tri, Loc Binh	<ul style="list-style-type: none"> - Only issue middle-term fishing certificate permits (5 years) - Shrimp farming area extension permits will not be issued in the future

	Tri, Loc Binh	- Impose enforcement (clear) on transgressing ponds without permits
Normal	The rest areas	- Issue long-term fishing certificate permits (10 years) - Impose enforcement (clear) on transgressing ponds without permits

5. The system of permits for the exploitation and culture of fishery resources on the lagoon area should be applied for more effective management of exploitation activities:

- The forbidden careers (tools/facilities) on the lagoon system include: explosives, electric drag nets, Te quệu, trawlers, eels screening nets
- The careers to be limited and/or improved by mesh size extension: Đăng (fishing gears), Đáy, aquatic weeds exploitation using engine boats.
- Sporting fishing activities, recreation activities, and small-scale activities are allowed without any permits application: All types of fishing rods, nơm (fishing basket), dậm, vợt, chài quăng; câu giăng and screening nets (re ben) with length less than 50 meters; types of lờ (bamboo fish traps), lợp, đẹo hầu, cào ngao; manual tools for crabs, clams, shellfish collection.

6. Technical requirements for protecting and developing lagoon fishery resources:

- Gradually set up and protect breed grounds, birth grounds, and lagoon bio-diversity.
- Add more high economic-value fishery varieties into the lagoon system
- Protect and restore coastal mangrove forest; protect and develop aquatic weeds at shallow water areas as shelter, birth, growing, and development places of lagoonal species.
- Build fish outlets in line with economic capacity at dikes and hydrolic works blocking the immigration, growth, birth lines of aquatic species.
- Gradually complete waste water treatment systems for treating waste water released from daily life, industry, aquaculture before its entering the lagoon.

7. Information technology via GIS should be applied for serving fishery management and related sectors. IT and GIS need to be used for fishery exploitation zoning, aquaculture zoning, water traffic zoning, breed and birth grounds zoning. Areas with overlaps in usage purposes should be gradually rearranged for sustainable development.

8. The system of the community-based fishery management should be developed in order to reduce the management expense for the authorities; also, it is advisable to enhance democracy at grass-root level among fishermen's organizations in self-managing fishing territory, fishery resources, aquatic environment and other related fields such as water traffic, flood and storms mitigation, rescue and relief works. Fishermen's organizations at all levels under the Vietnamese Fishery Association are major partners of authorities in the co-management of the fishery exploitation in particular and the fishery in general on the lagoon system of Thua Thien Hue.

Article 2: Base on the major contents regulated in the Article 1 of this Decision, People's committees of districts are responsible for the following:

1. Set up detailed planning, organize management tasks, and implement the planning for sustainable management and exploitation of the fishery resources on the lagoon system of Thua Thien Hue with integrated linkages to the coastal part.

2. Land use certificates will not be issued to land sites located near the lagoon, which make the lagoon shallower and degraded. The boundary between the water surface and the inland is identified by the topography map published in 1994 by the National administration of land-related issues.

3. Cooperate with the fishery sector to compile the system of natural fishery exploitation certificate permits for effectively managing and appropriately use the lagoon fishery resources.

4. Have an approach to modern tools and management technologies such as community-based management, zoning, GIS... in order to industrialize and modernize the fishery management.

Article 3: The Department of Fishery is responsible for the compilation of the "Statute on the exploitation of fishery resources on the lagoon system of Thua Thien Hue" in accordance with current regulations and submits to the PPC for approval in 2005; Also the Department should instruct agencies and sectors at all levels to carry out detailed management activities in the planning period.

Related Departments and agencies will base on this Decision to implement the co-management on the fields related to the production and development of fishery resources of the lagoon system, and guarantee the integrated management of the lagoon and coastal areas.

Article 4: The Head of the PPC office, Directors of the Departments: Fishery, Agriculture and Rural Development, Natural Resources and Environment, Planning and Investment, Finance; Chair persons of the districts: Phong Dien, Quang Dien, Huong Tra, Phu Vang, Phu Loc, and heads of related agencies are responsible for the implementation of this Decision./.

Recipients:

- As stated in Article 4,
- Standing Committee of PP's Council
- Chairman and deputies of PPC
- People's councils and committees:
Phong Dien, Quang Dien, Huong Tra,
Phu Vang, Phu Loc
- Filed

On behalf of PPC

For Chairman

(Signed and stamped)

Nguyen Ngoc Thien

Deputy Chairman

THE PEOPLE'S COMMITTEE OF THUA
THIEN HUE PROVINCE

No.: 4260/2005/QD-UBND

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Hue, December 19th, 2005

DECISION

Promulgating the regulations on the management of lagoon fisheries in Thua Thien Hue

THE PEOPLE'S COMMITTEE OF THUA THIEN HUE PROVINCE

- Pursuant to the Organization Law of the People's Council and People's Committee dated November 26th, 2003;
- Pursuant to the Fisheries Law dated November 26th, 2003;
- Pursuant to the Decision numbered 3677/2005/QD-UB dated October 25th, 2004 of the People's Committee of Thua Thien Hue Province on approving the master plan for lagoon fisheries management in Thua Thien Hue to the year 2010;
- Basing on the proposal of the Director of Fisheries Department in the statement numbered 380/TT-TS dated October 20th, 2005,

HEREBY DECIDES:

Article 1. Promulgate together with this Decision the Regulations on the management of lagoon fisheries in Thua Thien Hue.

Article 2. This Decision comes into effect after 15 days since the date of signing. All previous regulations of the Provincial People's Committee going against this Decision are abrogated.

Article 3. Chief of Secretariat of the Provincial People's Committee, Directors of Provincial Departments, Agencies and Associations, Chairmen of the People's Committees of the Lagoon Districts are responsible for executing this Decision./.

Recipients:

- As mentioned in Article 3;
- The Standing Committee of the Provincial Party;
- Standing Provincial People's Council;
- Chairman and Vice Chairmen of the Provincial People's Committee
- Provincial Party Committee's Office, Office of the People's Council and National Assembly Delegation;
- Office: Head and staff of the Agriculture Division, General Affairs Division;
- Archived

FOR THE PEOPLE'S COMMITTEE

FOR CHAIRMAN

VICE CHAIRMAN

(Signed and sealed)

Nguyen Ngoc Thien

THE PEOPLE'S COMMITTEE OF THUA
THIEN HUE PROVINCE

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

REGULATIONS ON THE MANAGEMENT OF LAGOON FISHERIES IN THUA THIEN HUE
(Promulgated following the Decision numbered 4260/2005/QD-UBND dated December
19th, 2005 by the People's Committee of Thua Thien Hue Province)

CHAPTER I
GENERAL STIPULATIONS

Article 1. Principles of management:

1. The management of lagoon fisheries is based on the principle of ensuring sustainable development for capture fisheries .
2. The management of fisheries is closely linked with the protection of environment and aquatic resources on the basis of ensuring the lagoon people's livelihood and economic benefits of the whole society.
3. To promote democracy at grassroots level and decentralization and to reduce the management cost of coastal fisheries, the State encourages the community-based fisheries management.
4. As the lagoon aquatic resources of the province are now being over-exploited, the Provincial People's Committee prohibits any new entrants to the activity of lagoon capture fisheries.
5. The arrangement of lagoon fishing gears should avoid domestic waterways, including secure corridors and berths. The Department of Fisheries updates and shows these positions in the lagoon fisheries management maps for local people's information.

Article 2. Definition

1. Lagoon fisheries can be understood as the exploitation of aquatic flora and fauna in the lagoon water bodies.
2. Fixed fishing gears are those connected to the lagoon bottom during the fishing season. The fixed fishing gears in Thua Thien Hue Lagoon are including fish corral, bottom net, fixed lift net, mullet trap.
3. Mobile fishing gears are those not connected to the lagoon bottom, they are mobile during one fishing period and during different fishing periods.

CHAPTER II FISHERFOLK ORGANIZATIONS

Article 3. Individuals and households participating in lagoon fisheries must organize themselves in fisheries associations at the village's level, inter-village or commune levels. The State will only delegate the power of lagoon fisheries management to the fishery associations at the grassroots level.

Article 4. Fisheries associations at the grassroots level are social and professional organizations. Fisheries associations are under the Vietnamese Fisheries Society (VINAFIS). The fisheries associations are operated under the leadership of the Communist Party and authority of the communes, sponsored by the Department of Fisheries and Districts' Offices of Agriculture and Rural Development and professionally instructed by the higher Fisheries Associations.

Article 5. The State delegates management of fisheries resources in certain areas of lagoon to fisheries associations at the grassroots level. On that basis fisheries associations properly and creatively regulate the fisheries activities of their members, ensuring the harmony among members and between members and associations and the whole society.

Article 6. Fisheries associations can take the initiative in arranging the fishing grounds while maintaining the traditional fishing grounds of individuals and households in line with the general planning of the State and the benefit of the community.

Article 7. Fisheries associations have to act as management agencies on behalf of government agencies at all levels in the fields of lagoon fisheries tax, management and protection of aquatic resources, management of the aquatic environment and transportation through the fishing grounds, etc.

Article 8. Fisheries associations at the local level are responsible for resolving conflicts in fishing grounds and about resources among individuals and/or household members. Only when conflict resolution fails do the authorities intervene.

Article 9. Within the framework of their associations, fisherfolk can create forms of voluntary fisheries economic cooperation in the community such as: credit, savings, fisheries product processing and sale, material supply, etc.

Article 10. Fisheries researchers, managers, traders, manufacturers and investors can participate in fisheries associations at the local level as unofficial members who provide assistance and cooperation for development. Fisheries associations at the local level can admit or refuse these people.

Article 11. The State encourages fisheries associations at the local level, based on the State Law, to develop their "self-management rules" detailing community rules and aimed at protecting fishing grounds, aquatic resources and other issues such as protection of the aquatic environment and management of water ways and collection of fisheries tax, etc.

Article 12. Fisheries associations at the local level have the right to expel members who seriously violate their rules many times, seriously violate the State Law or whose action adversely impacts the environment and aquatic resources.

CHAPTER III MANAGEMENT OF FISHERIES CAPACITY

Article 13. The Provincial People's Committee delegates power to the People's Committees of Lagoon Districts to issue the fishing rights to fisheries associations at the village and commune levels in certain water bodies in their designated area based on the quantity and types of fishing gear, fishing seasons and aquatic species.

The fishing rights in the lagoon area include the rights and responsibilities to timely prevent acts of fishery law violation, responsibilities of protecting fishing grounds, developing aquatic resources, ensuring free access to water ways, preventing degradation of the water environment and ensuring submission of taxes to the State.

Article 14. Fisherfolk using fixed fishing gear can only locate their gear within the designated water area of their local association. They have to maintain corridors, for aquatic species to move, according to the improved planning. Fisherfolk using mobile fishing gear are allowed to carry out their activity in adjacent areas, but they are not allowed to disturb the fixed fishing gear.

Article 15. In the lagoon it is forbidden to use fishing boats with a machine capacity of more than 16.5 HP.

Article 16. Natural aquatic resources exploitation taxes in the lagoon fully contribute to commune budgets. The People's Committees of the Communes define the percentage of tax that is left for fisheries associations at the local levels to cover the expenses of tax collection in the community, management, organization and implementation of aquatic resources protection and development activities.

Article 17. The taxed production norm of aquatic resource exploitation for each area of lagoon fisheries is agreed upon by the Provincial Tax Department and the Department of Fisheries and is then submitted to the Provincial People's Committee for approval after consultation is made with communes' authorities and local fisheries associations.

Article 18. Fisheries associations are granted the fishing right for a period of ten years in normal water bodies and five years in sensitive water bodies. In extremely sensitive water bodies, the District People's Committee annually grants the fishing rights or authorizes the Commune People's Committees to carry out an annual auction for this exploitation.

Article 19. The State can revoke rights over all or parts of the allocated water bodies from fisheries associations in the following cases:

1. The fisheries association does not exist any more.
2. The fisheries association voluntarily returns the allocated water bodies.
3. The term of use of the allocated water bodies has expired.
4. The fisheries association does not fish, protect the aquatic resources or abuse the resources without the permission of concerned agencies.
5. The fisheries associations seriously violate the law on fisheries management or other laws.
6. The term of use of fishing rights in the water bodies has not expired but the State needs the allocated water bodies for socio-economic development.

Article 20. The government agencies that decide to grant the fishing rights are entitled to make a decision to annul or cancel it.

Article 21. Sports and recreational fisheries and some small fishing jobs including hand-line fishery, fishing-tackle, casting-net fishing, gill net fishery with the net's length less than 50 m, fishing with pots of all kinds, oyster raking, crab and snail catching by hand can freely use the lagoon areas.

These activities cannot disturb the fishing gear registered by the local fisheries associations.

CHAPTER IV

PROTECTION OF FISHING GROUNDS AND AQUATIC RESOURCES

Article 22. It is strictly forbidden to carry out the following activities to destroy fisheries resources and pollute the lagoon aquatic environment:

1. Using poisonous chemicals, explosives, electricity to exploit fisheries resources.
2. Discharging garbage, letting pollutants and toxic substances leak beyond the limit.
3. Using such gear as push net, trawler, eel rake, stick net, drag net, mussel rake when fishing by motor-boat.
4. Destroying mangrove forests, reefs and other special biological landscapes.
5. Discharging diseased fisheries species into the fishing farms or into the lagoon water bodies.
6. Building, destroying or changing construction works in the lagoon water bodies without the authorization of concerned authorities and thus causing great damage to aquatic resources.

Article 23. It is forbidden to catch and sell aquatic resources of high economic value, rarity or in danger of extinction stated in the list of the protected species according to the State regulations.

Article 24. The regulations on non-fishing areas, where exploitation is forbidden during a long-term or short-term period, will be gradually developed in the lagoon while ensuring employment and livelihood of fisherfolk in line with the Fisheries Laws. The Department of Fisheries is responsible for doing research and making proposals on non-fishing areas in the lagoon.

The State encourages fisheries associations to develop their own rules to protect small areas used for reproduction, development and conservation of aquatic resources in the water bodies they administer.

Article 25. New exploitation activities are not encouraged in the lagoon. New activities must be approved by the Department of Fisheries who is in charge of assessing and appraising these new activities to ensure the principle of resources and environment protection.

Article 26. While irrigational works are built, study should be carried out on the construction of appropriate "fish passes", "fish ladder" so that aquatic species can pass through and extinction of those species migrating for reproduction can be avoided.

Article 27. The range of the buffer zone of the irrigational dykes in the lagoon is 20 m. Except for the no-trespassing buffer zone, which has a 5 m range starting from the dyke's foot, the area can be used for activities that do not impact the dyke's safety.

Article 28. The bottom nets and fish corrals should be arranged as to ensure more than 1/3 of the inlet's width for traffic. If the width cannot ensure the free access to the water way, it should be widened to the minimum level stated in the regulations on domestic water traffic safety.

Article 29. The mesh-size of the collection bag of bottom nets is periodically fixed at the minimum level as follows:

From January 1, 2006: $2a=18$ mm

Article 30. The minimum mesh-size of fish corrals is periodically fixed as follows:

From January 1, 2006 to December 31, 2007: $2a=14$ mm

After January 1, 2008: $2a=18$ mm

The minimum distance between the two units is 150 m (the distance is calculated from the upper corral to the lower corral)

The minimum distance between the two adjacent sides of fish corral units is 10 m.

The minimum distance between the side of fish corral and the bank of the lagoon is 50 m.

* In Cau Hai Lagoon, the side of fish corral should be at least 200 m away from the natural bank of the lagoon and the dykes surrounding shrimp ponds. It is applicable for communes in Phu Loc District.

Article 31. For catching "Gan" and "Hoi" shrimp (small species of shrimp), the Department of Fisheries will make regulations on the minimum mesh-size of fish corrals and specific times for exploitation before January 1, 2008.

Article 32. The State encourages fisheries associations to stipulate a minimum mesh-size larger than that defined by the State in order to raise the effectiveness of fisheries in line with their management capacity in the water bodies they administer.

Article 33. Electric drag nets are only used to collect aquaculture products and users have to register with the Sub-department of Fisheries Resources Protection who check carefully before issuing fixed-term licenses. Lists of users should be made public at the Commune's People's Committee Office for community's monitoring.

Article 34. It is not permitted to use net enclosures for a monoculture of tiger shrimps in lagoon water bodies. The deployment of net enclosures, rearing cages for aquatic resources that eat phytophagan and plankton and other raising forms should be in line with the planning and clearly stated in the fishing rights of the fisheries associations.

Article 35. The Department of Fisheries should develop plans to prevent diseases occurring among natural aquatic species in the lagoon. When diseased species are discovered, fisherfolk organizations, individuals and local authorities have to deal with this in a timely fashion and report it to higher organizations and the Department of Fisheries for instructions and guidance.

CHAPTER V

DEVELOPMENT OF FISHERIES RESOURCES

Article 36. The State encourages additional breeding, regeneration and diversification of lagoon aquatic resources. In the water bodies where aquatic resources are shared among many districts, the Department of Fisheries is responsible for coordinating with the People's Committees of Districts for resources regeneration. In the water bodies where aquatic resources are independently managed, the districts' and communes' authorities develop plans and organize the additional breeding for fisheries resource regeneration.

Article 37. The popularization of fisheries resource regeneration is especially encouraged. The Department of Fisheries and People's Committees of Lagoon Districts develop annual plans of resource regeneration for mobilizing participation of individuals, households, fisheries associations and hatcheries. The additional breeding is monitored by the Department of Fisheries, Department of Natural Resources and Environment and local authorities.

Article 38. The introduction of new species into the lagoon water bodies is carried out by the Department of Fisheries in line with the Law.

Article 39. The use of artificial reefs in the lagoon water bodies is carried out step by step depending on the budget of the authorities at all levels.

The State encourages local fisheries associations to independently develop artificial reefs in the water bodies they administer to increase the number of shelters and reproduction places for aquatic species.

CHAPTER VI
DOMESTIC AND INTERNATIONAL COOPERATION

Article 40. The State encourages domestic and international organizations and individuals to conduct study and investigation on aquatic resources, management, protection and development of fishing grounds and lagoon fisheries resources, especially applied studies to timely meet the concrete demands of local fisheries associations.

Article 41. The State encourages the education and training of staff, exchange of experts, information and experiences in coastal and lagoon fisheries management.

CHAPTER VII
IMPLEMENTATION ORGANIZATION

Article 42. The management of lagoon fisheries is the responsibility and duty of public organizations working in the field of fisheries, of the People's Committees at all levels and communities using the lagoon fisheries resources. Fisheries associations allocated with fishing in certain water bodies have to develop plans and methods of aquatic resource protection and development and take initiative in the production and regeneration of aquatic resources.

Article 43. Fines will be applied to acts of violation of the regulations, depending on the extent of the act, according to the State regulations on administrative fines in the field of fisheries (Decree no. 70/2003/ND-CP), environment protection, water traffic. Criminal law will be applied in serious cases.

Article 44. All agencies, organizations and individuals that directly contribute to the management, protection and development of lagoon fisheries resources and the prevention of acts causing damages to the living environment and lagoon fisheries resources are commended and rewarded by the State according to the regulations depending their contribution.

Article 45. Any agencies, organizations and individuals are entitled to lodge claims and denunciation of acts by individuals, organizations and agencies violating this Regulation according to the current Law on Claim and Denunciation.

During the implementation process, any difficulties should be timely reported to the Department of Fisheries and Provincial People's Committee for consideration and amendment.

Article 46. The Department of Fisheries is responsible for organizing the implementation, dissemination and execution of this Regulation in the whole province, coordinating with the mass media organizations to widely disseminate this Regulation.

FOR THE PEOPLE'S COMMITTEE
FOR CHAIRMAN
VICE CHAIRMAN
(Signed and sealed)
Nguyen Ngoc Thien

THE PEOPLE'S COMMITTEE OF THUA
THIEN HUE PROVINCE
3014/2005/QD-UBND

SOCIALIST REPUBLIC OF VIETNAM
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25/08/2005

REGULATION
ON THE ENVIRONMENTAL MANAGEMENT OF CENTRALIZED SHRIMP CULTURE AREAS IN
THUA THIEN HUE PROVINCE

(Promulgated following the Decision numbered 3014/2005/QD-UBND dated December 19,
2005 by the People's Committee of Thua Thien Hue Province)

CHAPTER I
GENERAL STIPULATIONS

Article 1. This regulation regulates the contents of environmental management of centralized shrimp culture areas in Thua Thien Hue Province, with the aim of sustainable development of shrimp culture.

Article 2. Object and Scope

Shrimp culture organizations or individuals, or other organizations or individuals involved environmentally in shrimp culture in Thua Thien Hue province (hereafter referred to as shrimp culturists.)

Relevant administrative agencies and shrimp culture development projects in Thua Thien Hue province.

Article 3. Following is the terminology used in this Regulation.

1. Centralized shrimp culture area. Any shrimp culture that is over 20 ha in area, with such independent, either completely or partially, infrastructure facilities as traffic, water supply and treatment system, etc.

2. Management³⁰ of centralized shrimp culture. A measure of controlling shrimp culture activities, ranging from pond locating, pond improving, water treatment, seed launching, nursery, epidemics prevention and mitigation to harvesting for sales.

3. Water treatment system. Includes water storage pond, for containing and cleaning water before supplying into pond; waste matter pond for reduce pollutants of waste matters before discarding into outer waters.

4. Waster matters. All waster matters of shrimp culture, either solid or liquid, such as: redundant feed, shrimp's excrement, dead shrimp bodies, redundant part of medicines, of chemicals for epidemics prevention and mitigation, biological by-products and substances for environmental treatment, and water discarded from shrimp pond.

5. Low tide shrimp culture area. Submerged area, permanent or impermanent, along the lagoon coast where the pond cannot be dried for technical procedures of intensive or extensive shrimp culture. Usually the low tide shrimp culture area is the lagoon water surface beyond the saline prevention dam or beyond the fields on the lagoon coast.

6. High tide shrimp culture area. Non-submerged area on lagoon coast where the pond can be dried for technical procedures of intensive or extensive shrimp culture. Usually the high tide shrimp culture area is area on the lagoon coast inside the saline prevention dam, or the area on the lagoon dunes, or the coast sand soil area.

CHAPTER II

REGULATION ON ENVIRONMENTAL MANAGEMENT OF CENTRALIZED SHRIMP CULTURE AREAS

Article 4. Projects for shrimp culture must abide by regulations of the State on evaluating the environmental impact.

Article 5. Regulation on building shrimp pond.

In addition to compliance required by Article 5 of the Regulation issued following the Decision numbered 04/2002/QĐ-BTS dated January 24, 2002 by the Ministry of Fisheries, the building of shrimp pond must meet the following requirements:

That the building of shrimp pond must complies with general planning of the province or districts and with detailed planning of the commune (if any) and that there must be a water treatment system.

That the building of shrimp pond must be restricted to the water surface area allocated, without any extension or transgression or misuse for other purposes.

Article 6. Regulation on shrimp culture activities.

6.1. Seasonal crop.

The launching of shrimp must comply with the crop calendar and the yearly instructions of DOFI.

6.2. Shrimp seed.

The production, nursery, trading and transportation of shrimp seed must comply with the stipulations of current laws.

The shrimp seed must meet the qualifications of the Sector. Before launching, the shrimp seed must be quarantined with PCR machine, which is to be confirmed by the Sub-department of Fisheries Resources Protection.

6.3. Density of launched shrimp seed.

In low tide culture areas, it is under 10 units/m² (tiger shrimp) (P15 type)

In high tide culture areas, it is 10-20 units/m² for semi-intensive culture and 25-40 units/m² for intensive culture (tiger shrimp) (P15 type).

For other species of shrimp (such as sugpo prawn), the density must comply with instructions provided by aquaculture technicians.

6.4. Feed.

The use of qualified industrial feed that meet the sector standards Number 28 TCN 102:2004 is encouraged (i.e. the mixture pill feed of sugpo prawn). The use of live and fresh feed is not allowed.

6.5. Medicines and chemicals used in shrimp culture.

The trading of medicine and chemicals must comply with the stipulations of the Ministry of Fisheries as stated in Decision numbered 03/2002/QD-BTS dated January 23, 2002 on issuing the Regulations on the management of medicine for fisheries species.

The types of medicines and chemicals used and traded in shrimp culture must not be subject to the list of forbidden types of the Ministry of Fisheries as stated in Decision numbered 07/2005/QD-BTS dated February 23, 2005; and to the list of forbidden types updated each year by MOFI.

The use of antibiotics should be restricted; and the use of antibiotics when necessary must follow the instruction of aquaculture technicians; and the use of antibiotics must be stopped 4 weeks before the harvest of shrimp for sales.

The use of biological products or treatment substances is encouraged for environmental improvement during processes of shrimp culture.

Article 7. The protection of environment in centralized shrimp culture areas.

Common sanitation must be kept in and out of the centralized shrimp culture area; waste matters and organic mud from processes of pond improvement and from cleaning activities after harvest season must be taken far from the culture area and discarded at the stipulated place. These matters must not be dropped during their transportation. Waste matters and poisonous chemicals (pesticide and herbicide) must not be discarded within the culture area.

In culture season, when there is sign of shrimp disease, the culturist must inform it to the Commune People's Committee or the Fisheries Protection Station or the Fisheries Association in the commune. The culturist must comply strictly with the requirements of the functional agencies in the treatment of shrimp disease. The discard of water from the diseased shrimp pond into outer space is strictly forbidden.

In case of occurrence of disease for shrimps and the culturist does deliberately not inform it but discards the waste water into outer space, he will be fined according to the current stipulations. If he purposes serious consequence or repeated act of violation, he will be forbidden one or two crops; or his allocated land or water surface will be taken back.

Article 8. Organizing the production and management of centralized shrimp culture areas.

The establishment of shrimp culture cooperatives are promoted in centralized shrimp culture areas. In centralized shrimp culture areas without such management organizations such as company, cooperative, or cooperative group, the culture households must organize themselves the cooperative groups or self-management groups to realize the management of the shrimp culture area according to this Regulation.

CHAPTER III
RESPONSIBILITIES OF PUBLIC ADMINISTRATIVE AGENCIES AND SHRIMP
CULTURISTS

Article 9. Responsibilities of DOFI

Provide instructions for the implementation and supervision of the implementation of this Regulation.

Direct agencies under its authority (Fisheries Extension Center, Fisheries Resources Protection Sub-department) in the control and supervision of the implementation of this Regulation by shrimp culturists in Thua Thien Hue province.

Provide advice to the Provincial People's Committee (PPC) in establishing environmental monitoring and warning network, planning and investing for infrastructure in culture areas.

Work in close coordination with District People's Committees (DPC) in detailed aquaculture planning of communes. Collaborate in the construction of facilities for shrimp culture areas with technical adequacy.

Provide instructions on the yearly crop calendar.

Direct the Fisheries Resources Protection Sub-department in realizing the following responsibilities:

- + Coordinate with relevant agencies or units, DPCs and CPCs in the implementation of this Regulation
- + Monitor lagoon environment and make periodical report to shrimp culturists.
- + Quarantine seed shrimps and control diseases according to current stipulations,

Direct the Fisheries Extension Center to:

- + Realize fisheries extension activities in an effort to support environmental management in centralized shrimp culture areas.
- + Establish and disseminate highly effective, stable and sustainable models of shrimp culture.
- + Coordinate with relevant functional agencies or units and local authorities in the implementation of this Regulation

Article 10. Responsibilities of relevant DPCs include:

Direct CPCs in the implementation and supervision of this Regulation.

Plan the yearly allocation of budget for fisheries epidemics prevention activities.

Article 11. Responsibilities of CPCs include:

Supervise the implementation of this Regulation.

Organize and instruct activities of cooperative groups, self-management team, etc. of communes' centralized shrimp culture areas, and ensure that this Regulation is fully implemented.

Instruct the cooperative groups, the self-management teams in promoting the establishment of the customary rule that shrimp culturists take responsibilities in developing a fund for environmental protection in centralized shrimp culture areas, for timely action in cases of epidemics, for reduction of risks and damages for shrimp culture

communities, and increasing the awareness and sense of responsibility of shrimp farmers in environmental protection in culture areas.

As a principle to promote the role of people in community-based management, awareness and responsibilities of shrimp culturists in environmental protection in shrimp culture areas must be promoted for effectiveness in the management of shrimp culture areas.

Article 12. Responsibilities of shrimp culturists include:

Understand and fully realize all contents of this Regulation and the case-specific rules of the cooperatives, cooperative groups, self-management groups on management of centralized shrimp culture areas in locality.

Report fully and faithfully on environmental and epidemics issues to technical staff and functional agencies when required.

Timely prevent and, if it is the case of violation, communicate to functional agencies acts of violation.

In case of epidemics, work closely with functional agencies to find a proper solution and reduce damages.

Article 13. Responsibilities of cooperatives, cooperative groups and self-management teams include:

Disseminate this Regulation to every shrimp culturist in centralized shrimp culture areas. Organize the implementation of every article of this Regulation.

Develop specific rules on environmental management in their own (cooperatives', cooperative groups' and self-management teams') centralized shrimp culture area. Organize the collection and right use of the fund for environmental protection in centralized shrimp culture areas.

Communicate fully information on shrimp culture situation, environmental changes and epidemics signs of shrimp ponds in localities; facilitate advantageous working conditions for functional relevant agencies when required. Work closely with relevant agencies in handling environmental issues and shrimp epidemics.

Work closely with relevant agencies in the extension of waterway systems according to the planning approved.

Timely report and suggest a proper approach to handle cases of violation in the locality.

Article 14. Responsibilities of service providers involved in shrimp culture:

Units or individuals providing services related to centralized shrimp culture areas have the right to store and provide only goods that have undergone quarantine and test by the State. The storage and sale of feed, biological products, chemicals or veterinary medicine subject to the forbidden list of MOFI is not allowed.

Units or individuals providing services as expressed on item 1 of this article are responsible for the consequences created by themselves before the Laws.

CHAPTER IV
HANDLING OF VIOLATIONS AND OF APPEALS AND DENOUCEMENT

Article 15. Units or individuals violating any article of this Regulation, depending on characteristics and degree of violation, are financially fined or accused of criminality; any damage done will have to be compensated according to stipulations of the Laws.

Article 16. Units or individuals have the right to make appeals or denouncement to local authority against individuals violating this Regulations, and thus causing bad results. The resolution of appeals or denouncements must comply with the stipulations of laws on appeals and denouncements.

CHAPTER V
ON IMPLEMENTATION

Article 17. Any difficulties arising during implementation should be recorded and reported to PPC for reconsideration, modification and complementation.

For The Provincial People's Committee
(Signed and Sealed)

Vice-chairman
Nguyen Ngoc Thien