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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**CRITICAL ANALYSIS OF MARINE  
CASUALTY INVESTIGATION IN THE  
PHILIPPINES**

By

**ALBERTO T. FERRE**  
**Philippines**

A dissertation submitted to the World Maritime University in partial  
fulfilment of the requirements for the award of the degree of

**MASTER OF SCIENCE**  
**in**  
**MARITIME AFFAIRS**

**(MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION)**

2022

## Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature):

.....

(Date): 20 September 2022

.....

Supervised by: Dr. Rafael Baumler

.....

Supervisor's affiliation.....

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## Abstract

Title of Dissertation: **Critical Analysis of Marine Casualty Investigation in the Philippines**

Degree: **Master of Science**

When maritime accidents occur in the Philippines, the Maritime Industry Authority (MARINA) and the Philippine Coast Guard (PCG) conduct independent safety casualty investigations to determine the underlying cause and make recommendations to avoid repeating the same mistakes in the future. In theory, having two bodies could improve the quality of the results, but it could also lead to wasted resources, a lack of cooperation, or unnecessary competition.

This paper examines why two government agencies are conducting marine casualty investigations with the same objective. Also, the limitations and opportunities of having the two separate casualty investigation bodies are explored. This study used a qualitative method that included looking at other policy documents about marine casualty investigations in the Philippines. Interviews with key officers and staff from the two government agencies and some private shipping companies directly involved in the marine casualty investigations in the Philippines were also conducted.

Results show that when it comes to the international obligation of the Philippines in investigating very serious marine casualty investigations, the country met the requirements mandated by the IMO Casualty Investigation Code. However, in the domestic fleet, the conduct of marine safety investigations is redundant. It needs further assessment to be more effective as the objective is the same for both investigating bodies. In the end, the researcher proposed measures to effectively implement the marine casualty investigation in the country to improve its compliance with the requirements set by the IMO Marine Casualty Investigation Code.

**KEYWORDS:** BMI, PCG, MARINA, Casualty Investigation Code, marine accidents

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## List of Abbreviations

BMI	Board of Marine Inquiry
CHED	Commission on Higher Education
CPA	Cebu Ports Authority
DOH	Department of Health
DOJ	Department of Justice
DOTC	Department of Transportation and Communication
DOTr	Department of Transportation
DPA	Designated Person Ashore
EO	Executive Order
ERE	Emergency Readiness Evaluation
ES	Enforcement Service
GISIS	Global Integrated Shipping Information System
IMO	International Maritime Organization
IRR	Implementing Rules and Regulations
ITSA	International Transportation Safety Association
JTSB	Japan Transport Safety Board
LL	International Convention for Load Lines
MAIB	Marine Accident Investigation Branch
MARINA	Maritime Industry Authority
MARPOL	International Convention for the Prevention of Pollution from Ships
MCA	Maritime and Coastguard Agency
MCIB	Maritime Casualty Investigation Board
MCIS	Marine Casualty and Investigation Service
MCIT	Maritime Casualty Investigation Team
MISS	Management Information and Systems Service
MLC	Maritime Labour Convention
MSSC	Maritime Safety and Services Command
NTC	National Telecommunications Commission
NTSB	National Transportation Safety Board
OMS	Office of Maritime Safety
OSS	Overseas Shipping Service
PCG	Philippine Coast Guard
PD	Presidential Decree
PDI	Pre-Departure Inspection
PIO	Public Information Office
PMMRR	Philippine Merchant Marine Rules and Regulations
PNP-MG	Philippine National Police Maritime Group
PPA	Philippine Ports Authority
PRC	Professional Regulation Commission
PTSB	Philippine Transport Safety Board
RA	Republic Act
SOLAS	International Convention for the Safety of Life at Sea
SOP	Standing Operating Procedures
STCW	International Convention on Standards for the Training, Certification and Watchkeeping for Seafarers
TESDA	Technical Education and Skills Development Authority
TSB	Transportation Safety Board of Canada

TSIB	Transport Safety Investigations Bureau of Singapore
UNCLOS	United Nations Conventions on the Law of the Sea
UK	United Kingdom
USCG	United States Coast Guard
VSEI	Vessel Safety Enforcement Inspections
WMU	World Maritime University

## Chapter 1: Introduction

### 1.1 Background of the Study

Marine safety investigations are not undertaken with the purpose of assigning blame or determining liability; rather, the inquiry is carried out with the intention of preventing marine casualties and marine disasters in the future (IMO, 2008).

Being a member of the International Maritime Organization (IMO) and the United Nations Convention on the Law of the Sea (UNCLOS), the Philippines adheres to the requirements set by these international bodies, especially so in the safety of life and property at sea and the protection of the marine environment. However, despite all the maritime safety regulations enforced throughout the country, maritime accidents still do happen.

#### **The Philippines: an archipelagic country with a national fleet**

The Philippines is an archipelagic country with more than 7,100 islands. The country's topography is broken up by the sea, with a coastline of 36,290 kilometers, making it the world's 5th longest.<sup>1</sup> Maritime transportation is one of the most important ways of inter-island transit for people and commodities around the country due to its topography. Therefore, numerous ships ensure the connection of the country.

The number of registered ships in the Philippines totals 29,974 as of calendar year 2020. There are 4,114 large vessels with an average age of 23.09 years old and 25,860 motor banca/boats with an average age of 7.76 years old among these figures<sup>2</sup>.

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<sup>1</sup> The length of the Philippine coast line available at World Atlas "Maps Of The Philippines"  
<https://www.worldatlas.com/maps/philippines>

<sup>2</sup> Maritime Industry Authority statistical reports for 2020 available at  
[https://marina.gov.ph/wp-content/uploads/2021/11/2016-2020-MARINA-Statisticsl-Report\\_for-posting.pdf](https://marina.gov.ph/wp-content/uploads/2021/11/2016-2020-MARINA-Statisticsl-Report_for-posting.pdf)

## The supervision of maritime affairs in the Philippines

Under the maritime sector of the Department of Transportation of the Philippines, four prominent agencies; Philippine Ports Authority (PPA), Cebu Ports Authority (CPA), Maritime Industry Authority (MARINA), and the Philippine Coast Guard (PCG), play an important role in keeping a safe and secure maritime transportation in the country.

*Table 1. Mandates of the four (4) agencies under the Department of Transportation<sup>3</sup>*

<b>Organization</b>	<b>Mandates</b>	<b>Authority</b>
MARINA	To bring together the country's development, promotion, and regulation of the maritime industry.	Presidential Decree No. 474
PCG	To conduct maritime search and rescue, maritime law enforcement, maritime safety, marine environmental protection, and maritime security.	Republic Act No. 9993
PPA	To establish, develop, regulate, manage and operate a rationalized national port system in support of the trade and national development.	Presidential Decree No. 505
CPA	To administer all ports located in Cebu Province.	Republic Act No. 7621

## Accidents/incidents investigated by national authorities

Every year, maritime accidents and events occur, resulting in damage to ships and property as well as the loss of life.

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<sup>3</sup> Among the four (4) agencies, only MARINA and PCG conduct marine casualty investigation based on their respective mandates.

The PCG recorded 4,467 maritime accidents/incidents within Philippine territorial waters over a five-year period, from 2015 to 2019<sup>4</sup>. The records of maritime accidents on the national fleet outside national water are monitored by MARINA, but no precise data have been found.

Usually, MARINA and PCG are in charge of investigating such accidents/incidents according to their respective attributions.

A third government agency, the Philippine National Police – Maritime Group (PNP-MG), can also conduct an investigation. However, the results of their investigation might not necessarily touch on the safety aspect but more relatedly on the crimes committed onboard the Philippine registered ship in the country's territorial waters.

Currently, three bodies have the legal capacity to conduct casualty investigations. It means that there is not a single casualty investigation board in the Philippines covering all accidents/incidents.

## 1.2 Problem Statement

When it comes to marine casualty investigation, the MARINA and PCG both perform most of the casualty investigations. For that, each agency has to maintain and use its own capacity. Their respective internal guidelines mandate both agencies to submit the results of their casualty investigations on cases involving very serious accidents to the IMO.

While in theory, having two bodies conducting marine casualty investigations may strengthen the quality of findings, such a setup may also create risks in terms of resource duplication and allocation, lack of cooperation, or unnecessary rivalry.

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<sup>4</sup> Maritime Casualty Investigations Statistics from CY 2015 to 2019 available at <https://coastguard.gov.ph/index.php/transparency/functions/marsaf>

### 1.3 Objectives and Research Questions

The main aim of this research paper is to determine whether the current system of conducting marine casualty investigation in the Philippines meet the requirements stipulated in the IMO Casualty Investigation Code.

Research objectives:

1. To examine the historical reasons of having two separate agencies, MARINA and PCG, which conduct marine casualty investigations in the Philippines;
2. To analyze the limitations and opportunities of having the two separate casualty investigation bodies doing the same functions; and
3. To provide recommendations on how the current systems of marine casualty investigations in the Philippines can be made better to meet the needs of the IMO Casualty Investigation Code.

The research aims to answer the following questions:

- Why is it that there are different bodies conducting marine casualty investigations in the Philippines?
- How effective is the current separation of the two agencies to conduct investigations?
- How can the current separation between MARINA and PCG be improved in order to meet the requirements stipulated in the IMO Casualty Investigation Code?

### 1.4 Research Method

The research uses qualitative methodology through semi-structured interviews and documentary analysis of the previous and existing laws and other policy documents related to maritime casualty investigation in the Philippines.

### 1.5 Scope and Limitations

The research focuses on the internal policies of the two government agencies, the MARINA and PCG, in relation to the implementation of marine/maritime casualty

investigations and how this internal policy conforms to the requirements set by the IMO Casualty Investigation Code.

Since several agencies in the Philippines look into marine accidents, this study will only focus on the safety aspects of the investigation. It will not look into any other inquiries that are aimed at finding fault, nor will it investigate any different kinds of liabilities.

## Chapter: 2 Literature Review

Marine safety investigation plays a crucial part in understanding the causes of maritime accidents and incidents. Findings of such investigation can improve the prevention of accidents and enhance safety at sea. Its purpose is to improve maritime safety and protect the marine environment by identifying the flaws in the system and making recommendations to correct the flaws (Farid & Elashkar, 2020). However, the determination of the root causes of accidents may not be easy to identify and depend on the quality and depth of the investigation.

The IMO Casualty Investigation Code mandates that “proper identification of causal factors requires timely and methodical investigations” (IMO, 2008). Its purpose is to provide assistance to all of the member states in order to assist them in developing a standardized methodology for the conduct of their marine safety investigations for marine casualties and incidents.

### 2.1 Legal Basis in Conducting Maritime Casualty Investigation

#### 2.1.1 United Nations Convention on the Law of the Sea (UNCLOS) 1982

The United Nations Convention on the Law of the Sea (UNCLOS 82) contains the primary instrument governing the conduct of ship inspections and investigations. Article 94, paragraph 7 of UNCLOS 82 says that when it comes to how the inquiry is made, “Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.” Also, the conventions say that the Port State and the Coastal States each have a part to play in maritime accident investigations.



## 2.1.2 IMO Conventions that requires investigations

### 2.1.2.1 International Convention for the Safety of Life at Sea (SOLAS) 1974

All ship-related accidents should be reported because SOLAS deals with them. In accordance with SOLAS Chapter 1, Regulations 21 Paragraph a, "Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the present Convention when it judges that such an investigation may assist in determining what changes in the present regulations might be desirable." In terms of shipboard safety, the investigation's results are significant for looking at all of the safety procedures in place to ensure that similar things don't happen again and how they can be prevented effectively.

### 2.1.2.2 International Convention for the Prevention of Pollution from Ships (MARPOL) 73

Article 12 of MARPOL 73, paragraph 1, says, "Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the regulations if such casualty has produced a major deleterious effect upon the marine environment."

### 2.1.2.3 International Load Line Convention (LL) 1966

Article 23, paragraph 1, of the International Load Line Convention of 1966 says that "Each Administration undertakes to conduct an investigation of any casualty occurring to ships for which it is responsible and which are subject of the present Convention when it judges that such an investigation may assist in determining what changes in the Convention might be desirable." In addition, paragraph 2 says that "Each Contracting Government undertakes to supply the Organization with the pertinent information concerning the findings of such investigations."

### 2.1.2.4 Maritime Labour Convention (MLC), 2006

In accordance with the MLC 2006, Standard 4.3 paragraph 5 stipulates that "The competent authority shall ensure that: occupational accidents, injuries, and diseases

are adequately reported, taking into account the guidance provided by the International Labor Organization with respect to the reporting and recording of occupational accidents and diseases and occupational accidents are investigated.”

According to the aforementioned legislative framework, any vessel operating in international waters is subject to an investigation in the case of any safety accidents or incidents that may have occurred onboard, particularly in the event that the ship or the marine environment is damaged. In addition, legislation regarding casualty investigations for vessels that do not meet the size requirements of the convention must be adopted by each member state in accordance with the framework established for the investigation of their particular types of casualties.

### 2.1.3 Casualty Investigation Code 2008

The International Maritime Organization (IMO) Resolution MSC.255 (84), passed on May 16, 2008, established the Code of International Standards and Recommendations for a Safety Investigation of a Marine Casualty or Marine Incident. The Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident is a set of rules for how to look into a marine accident or accident at sea. This code also referred to as the Casualty Investigation Code, went into effect on January 1, 2010. The Code provides guidelines in the process and outcomes of maritime safety investigations in cases of marine casualty or marine incidents for the benefit of flag States, coastal States, the Organization, and the shipping industry.

The Code comprises three (3) parts: the general provisions, the mandatory standards, and the recommended practices.

A single event or a set of events that happened resulted in any of the following and has occurred in connection with the operation of the ship is considered to be a marine casualty according to the general provisions, which are defined in chapter two (2):

- a person's death or serious injury;
- loss of a person from the vessel;

- when the ship is lost, thought to be lost, or abandonment of a ship;
- damage to a ship's structure;
- a ship getting stuck, broken, or involved in a collision;
- damage to marine infrastructure outside of a ship that could put the ship's safety at risk, another ship, or an individual, and; or severe damage to the environment brought about by the damage of ship or ships.

As part of the mandatory standards, all member States must provide the Organization (IMO) with detailed contact information of their marine safety investigation Authority(ies) in charge of the marine safety investigation.

### **Role of the flag States**

It is a requirement that in every very serious marine casualty, a marine safety investigation must be made by the flag State with its agreement with other substantially interested States in accordance with the Code.

### **Powers of an investigation**

As stated in chapter 8 of the Code, all States shall ensure that their national laws provide investigator(s) with authority to conduct marine safety investigations.

### **The investigation should not be directed externally.**

Following the requirements laid out in Chapter 11, investigators are expected to conduct their inquiries in a fair and objective manner. The results of their inquiries must be free from any interference from any individuals or organizations that the investigation's findings might impact.

## **Administrative Responsibilities**

Under the recommended practices of the Code, in chapter 15, the States have the responsibility to provide sufficient material and financial resources and suitably qualified personnel to undertake safety investigations. Investigators are appointed based on the skills outlined in resolution A.996(25) (see Annex A)

### **2.2 Examples of Marine Casualty Investigation Bodies around the world**

The following five (5) countries were chosen as examples of marine casualty investigation bodies because they are all members of the International Transportation Safety Association (ITSA), an organization advocating independent non-judicial investigations in all modes of transportation.

#### **2.2.1 Marine Casualty Investigation Body in the United Kingdom (UK)**

Marine casualties involving vessels flying the flag of the United Kingdom or any other flag that occur within UK territorial waters are investigated by the Marine Accident Investigation Branch (MAIB) in the United Kingdom. It is a separate branch within the Department for Transportation and not part of the Maritime and Coastguard Agency (MCA). MAIB is responsible for:

- Conducting investigations to ascertain the causes of maritime accidents.
- Publishing reports with safety recommendations for enhancing maritime safety.
- Bringing more attention to how marine accidents happen.
- Getting countries and other countries to work together better on marine accident investigations.

In addition, the United Kingdom has a coastguard agency known as the Maritime and Coastguard Agency (MCA), which focuses less on the commercial aspect of shipping regarding accident prevention and more on issues concerning coastal safety. The responsibility for investigating accidents belongs to the MAIB.

### 2.2.2 Marine Casualty Investigation Body in the USA

The National Transportation Safety Board (NTSB) is a government organization that works on its own and is tasked by congress with looking into major accidents involving other means of transportation, such as highways, maritime, pipelines, and railroads, as well as every civil aviation accident in the United States.

Marine casualties are investigated by the Office of Marine Safety (OMS), which is part of the NTSB. The purpose of these probes is to find out the most likely cause of each maritime accident and to determine the safety recommendations that will help prevent accidents of a similar nature in the future.

Investigations of commercial vessel casualties and reports of violations that require a determination of apparent cause and culpability are also conducted by the United States Coast Guard (USCG). The findings are utilized in the process of formulating safety recommendations to reduce the likelihood of occurrences of future casualties.

### 2.2.3 Marine Casualty Investigation Body in Canada

The Transportation Safety Board of Canada (TSB) is a government agency responsible for conducting investigations into maritime collisions in Canada or anywhere else in the world where a Canadian citizen is involved. The Board also takes part in investigations taking place in other countries in order to protect its interests and, on occasion, to provide assistance with investigations.

Investigators for the TSB Marine come from a variety of backgrounds, including certified masters or chief engineers of commercial ships, captains of fishing boats, or naval architects. All of them have a lot of experience working in the marine industry.

### 2.2.4 Japan Transport Safety Board

The Japan Transport Safety Board, also known as the JTSB, is an independent investigation body in Japan. Its mission is to conduct accident investigations in a

scientific and objective manner by conducting in-depth research into the circumstances surrounding accidents, including the organizational factors involved.

#### 2.2.5 Marine Casualty Investigation Body in Singapore

Marine Casualty investigations in Singapore are under the Transport Safety Investigations Bureau (TSIB). The TSIB is the agency in Singapore that looks into air, sea, and rail accidents and incidents. Its goal is to improve transportation safety by looking into accidents and incidents in the air, water, and rails.

The Marine Branch is responsible for investigating very serious marine casualties involving ships registered in Singapore and vessels registered in other countries that occurred inside the territorial waters of Singapore. It conducts investigations in line with the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Incident established by the International Maritime Organization (IMO).

## Chapter 3: Research Methodology

Qualitative methods were used to do this research consisted of document analysis and semi-structured interviews to gather data and information concerning the implementation of marine casualty investigations in the Philippines.

### 3.1 Document Analysis

According to Bowen (2009), document analysis refers to a methodical process that can be used to review or assess a variety of documents, including those that are printed as well as those that are electronic (computer-based or delivered over the Internet). With this method, the existing Philippine laws, also known as Republic Act, Presidential Decree, and Executive Order, were retrieved from the website of lawphil.net, a Philippine law, and jurisprudence data bank of Arellano law foundations. This allowed the researcher to trace back the history to the point in time when the first Philippine law was enacted, one that addressed the maritime casualty investigations in the country. Further, the laws on the creation of the PCG and MARINA were extracted and reviewed using the same website, lawphil.net. This was done to figure out what scope of the powers and functions possessed by both of these government agencies, particularly those functions and powers that were associated with the marine casualty investigations. Other documents that were reviewed were the internal policies from the MARINA and the PCG.

From the MARINA is their Administrative Order Number 01-18 dated 12 January 2018, entitled Re-organization of the Enforcement Service (ES) with the Creation of a Marine Casualty Investigation Section (MCIS). The MCIS was created to assume responsibility for the conduct of safety investigations from the onset of a marine casualty and/or marine incident in the major sectors of the country's maritime industry, which includes domestic shipping, overseas shipping, shipbuilding, and ship repair and maritime manpower sectors.

On the part of the PCG, their two internal policies in the form of Standing Operating Procedures (SOP), SOP Number 08-20 dated 15 April 2020 entitled "Revised

Guidelines on Marine Casualties and Marine Incidents Investigation” and its latest amendment, SOP Number 04-22 dated 29 April 2022 with the title “Revised Guidelines in Maritime Casualties and Maritime Incidents Investigation” were both reviewed. These two SOPs prescribed policies, procedures, and responsibilities in conducting an expeditious and impartial investigation of the cause of maritime casualty and marine incidents which occurred within the waters subject to the jurisdiction of the Philippines involving domestic vessels, foreign and Philippine-flagged vessels.

With regard to the manner in which marine casualty investigations are carried out, international conventions, such as those established by UNCLOS, as well as the regulations imposed by IMO and ILO, have been gathered and examined.

### 3.2 Interview

Semi-structured interviews were conducted with selected marine casualty investigators from MARINA and PCG as they are mandated to conduct marine casualty investigations following the code of international standards and recommended practices for a safety investigation into a marine accident or marine incident.

One Regional Officer from the PNP-MG was also interviewed to know how they conduct their casualty investigations whenever there are marine casualty incidents in their area of responsibility.

Moreover, selected private Designated Person Ashore (DPA) and Surveyors, one from Luzon, one from the Visayas, and one from Mindanao, all working on domestic shipping companies, were also requested to take part in the interview to get the public view on how marine casualty investigations in the Philippines are conducted by the government agencies. In addition, one Marine manager who is also acting as the Company Security Officer/DPA from one private shipping company managing ships registered on foreign flags was selected because of his vast experience as a marine casualty investigator.



As part of the data collection, via email, initial communications were made to the heads of marine casualty investigations units/sections in the PCG and MARINA as early as February 2022. After receiving approval from the WMU Research Ethics Committee, formal request letters were then emailed to the heads of the marine casualty investigation section/unit of MARINA and PCG, as well as to the DPA's/Surveyors working for domestic shipping companies in the Philippines and to two (2) Regional Officers of the PNP-MG. Three sets of guide questions were prepared to guide the participants in the interview (see Appendix A to C). The questions covered: sociodemographics, how marine casualty investigations are conducted, overlapping between MARINA and PCG, and the effectiveness of marine casualty investigations.

The interviews were conducted with nine (9) participants, who were all in the Philippines, using the zoom application. One participant could not have the zoom meeting due to some commitments in his office but had just sent back his answers to the questions provided. One interview was performed face to face with one of the retired Administrator from MARINA. All these interviews were conducted to extract their perspectives on the implementation of maritime casualty investigations in the Philippines. Participants were interviewed individually and briefed on the purpose of the session and were assured of the confidentiality of the gathered information. All the interviews were transcribed and furnished to the participants for their verification and corrections.

In total, the researcher was able to get important information from eleven (11) participants composed of three (3) Officers from PCG, two (2) from MARINA, one (1) from PNP-MG, four (4) from domestic private shipping companies and one (1) from former Administrator of MARINA.

## Chapter: 4 The Origin of Maritime Casualty Investigation Bodies in the Philippines

Learnings from maritime accidents are of great value to review what went wrong and how these accidents can be avoided in the future. To do this task, a competent and reliable marine investigation body(ies) must be fit for the purpose.

This chapter is where the researcher talks about the history of where the Board of Marine Inquiry (BMI) originated and how marine casualty investigations are being carried out at the present time in the Philippines.

### 4.1 The Law Covering BMI

Republic Act Number 1937 (RA No. 1937) is an Act to revise and codify the Tariff and Customs Laws of the Philippines, also known as the Tariff and Customs Code of the Philippines was approved on 22 June 1957.

Under Book II, Title I, Section 602 of RA No. 1937, among the twelve (12) general responsibilities, powers, and areas of responsibility of the Bureau of Customs, the five articles directly addressed vessels and crew. Later<sup>5</sup>, the BMI was given the authority to undertake investigations into maritime accidents and the professional behavior of marine officers to support legal proceedings.

The outcome of the BMI investigation was submitted to the Commissioner of the Bureau of Customs. Based on the findings and suggestions of the BMI, the Commissioner had the authority to reprimand a licensed marine officer or suspend or revoke any marine certificate on account of professional misconduct, intemperate habits or negligence, or incapacity. The decisions of the Commissioner are final unless, within thirty (30) days after its promulgation, an appeal is filed within the department.

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<sup>5</sup> Decided after the adoption of 1957 code, the precise date could not be determined with the sources available.

For the purpose of investigating marine accidents, the Custom districts have the authority to establish boards.

From the document analysis, it is evident that the Board of Marine Inquiry (under the Customs and Tariff code of the Philippines) conducted marine investigations to initiate sanctions following accidents or misconduct.

#### 4.2 The Creation of the PCG – The Agency’s Role in Marine Casualty Investigation

On 04 August 1967, Republic Act Number 5173 (RA 5173) created the Philippine Coast Guard under the Philippine Navy with functions:

- a. To enforce or assist in the enforcement of all applicable laws upon the high seas and waters subject to the jurisdiction of the Republic of the Philippines;*
- b. To enforce laws, promulgate and administer regulations for the promotion of safety of life and property within the maritime jurisdiction of the Philippines; and*
- c. To develop, establish, maintain and operate, with due regard to the requirements of national defense, aids to maritime navigation and rescue facilities for the promotion of safety on and over the high seas and waters, subject to the jurisdiction of the Philippine.*

Among the 15 specific functions vested in the PCG (Section 5 of R.A. 5173), paragraph f stated that the PCG is “*to investigate marine casualties and disasters including those arising from marine protest filed with the Bureau of Customs relative to the liability of shipowners and officers.*” With this new mandate, the functions of BMI (initially under the Customs office) to conduct investigations on marine casualties were transferred to the PCG as stated in Section 4 of R.A. 5173.

In 1974, the Presidential Decree (P.D.) Number 601 enabled the PCG to strengthen its functions related to the safety of life and property at sea. From the previous 15 powers and functions of the PCG, the new revision had 21 specific functions. Under Section 5 of P.D. 601 (Specific Functions), paragraph m established that the PCG is “to enforce laws and promulgates rules and regulations requiring performance of duties of shipowners and officers after accidents and investigate marine casualties and disasters including those arising from marine protest relative to the liability of shipowners and officers.”

To conduct an investigation, the composition of the BMI was revised. The investigation board number did not change, but the Commandant of the Philippine Coast Guard recommended to the Secretary of National Defense the composition of the board members. Under the PCG, the BMI was composed of the Chairman (a line Officer with the rank of Captain), two Master Mariners, one Chief Engineer of the Philippine Merchant Marine, and one lawyer. The procedures for the conduct of investigations followed the previous ones developed by the Bureau of Customs.

On 30 March 1998, in accordance with Executive Order Number 475, the PCG was transferred from the Department of National Defense to the President's office, and fifteen days after, transferred to the Transportation and Communications Department (DOTC) by virtue of Executive Order Number 477 dated 15 April 1998.

With such transfers, the PCG continued its mandate as the agency whose primary responsibility is to promote safety at sea and protect the maritime environment<sup>6</sup>.

On 12 February 2010, the Philippines Coast Guard Law (PCG Law) of 2009<sup>7</sup> was approved by President Gloria Macapagal Arroyo. This new set of regulations revoked previous regulations, such as RA 5173 and PD 601. However, investigation of marine casualties remained a PCG attribution.

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<sup>6</sup> Pursuant to the provisions of RA 5173, P.D. 600, P.D. 601, P.D. 602 and P.D. 979, as amended.

<sup>7</sup> Republic Act Number 9993 (RA 9993)

The Implementing Rules and Regulations (IRR) of the PCG law was published on 19 April 2011 and included provisions related to marine accident investigations:

Selection of the role of PCG in casualty investigation (additional details are available in Annex B):

*Rule 3 (j) To investigate and inquire into the causes of all maritime accidents involving death, casualties and damage to properties.*

*Rule 3 (j) 1. The PCG, through the Board of Marine Inquiry (BMI) and other offices with associated functions that may hereinafter be created by the PCG, shall be the country's maritime casualty investigating authority responsible for conducting investigations on maritime accidents [...] within waters subject to the jurisdiction of the Philippines and those involving vessels of Philippine registry. [...]*

*Rule 3 (j) 2. The conduct of maritime casualty investigation shall conform to international standards as recommended by the "Code of the International Standards and Recommended Practices for Safety Investigations into a Marine Casualty or Marine Incident" of the International Maritime Organization (IMO).*

*Rule 3 (j) 3. To enhance cooperation with other international and national maritime safety agencies, the results of the investigation conducted shall be published in the proper forum and shall be submitted to the IMO or any substantially interested state.*

Following investigations, the PCG may issue internal guidelines in the form of Standing Operating Procedures (SOP) in the implementation of maritime casualty investigations.

HPCG/CG-8/MSSC SOP Number 04-20 dated 29 April 2022, entitled "Revised Guidelines on Maritime Casualties and Maritime Incidents Investigation," is the latest guidelines followed by the PCG maritime casualty investigators.

#### 4.2.1 PCG's Jurisdiction

The PCG is responsible for an expeditious and impartial investigation of the cause of maritime casualty and marine incidents which occurred within the waters subject to the Philippines' jurisdiction involving domestic, foreign, and Philippine flag vessels.

#### 4.2.2 PCG's Composition of Investigating Team and its Procedures for Reporting

In cases of very serious marine casualty, the Maritime Safety Services Command (MSSC) sends its Maritime Casualty Investigation Team (MCIT) to conduct a safety investigation. MCIT is composed of the following:

- Lead Investigator or the Head of the MCIT
- Assistant Head MCIT (Chief Mate)
- Member MCIT (Deck Officer)
- 1 Legal Officer

Once the investigation completes, the MCIT will submit a draft report to MSSC. Their reports will be reviewed by the Maritime Casualty Investigation Board (MCIB). This MCIB is a body composed of the following:

- Chairperson: Deputy Commander of MSSC
- One Licensed Master Mariner
- One Licensed Chief Engineer
- One Licensed Naval Architect
- One Lawyer
- A Secretariat

After MCIB has reviewed the draft report, it will be endorsed by the Commander of MSSC to the Commandant of the PCG for his signature. After the report is signed, the Official and Final Investigation Report will be submitted to the DOTr.

In the conduct of marine casualty investigations involving foreign flag vessels, the PCG follows the provisions in the mandatory standards set in the Casualty investigation Code.

#### 4.3 The Creation of Maritime Industry Authority (MARINA) – The Agency’s Role in Marine Casualty Investigation

On 01 June 1974, MARINA was created by virtue of P.D. Number 474 (PD 474) or also known as the Maritime Industry Decree of 1974. It was placed under the Office of the President, whose task is to bring together how the maritime industry in the country grows, is promoted, and is regulated.

Section eleven (11) paragraph b states the Administrator of MARINA shall have the general powers, functions, and duties *“to undertake researches, studies, investigations and other activities and projects, on his own initiative or upon instructions of the Board, and to submit comprehensive reports and appropriate recommendations to the Board for its information and action.”*

Further, the Administrator has the power *“to investigate by itself or with the assistance of other appropriate government agencies or officials, or experts from the private sector, any matter within its jurisdictions, except marine casualties or accidents which shall be undertaken by the Philippine Coast Guard”* (Section 12 paragraph e). So, there was no overlap with this regulation.

On 23 July 1979, MARINA was attached to the newly created Ministry of Transportation and Communications<sup>8</sup>. Executive Order Number 1011 (issued on 20 March 1985) strengthened the powers and functions of MARINA (details in Annex C).

With the transfer of quasi-judicial functions to MARINA, the agency can investigate violations that would cause the suspension or cancelation of the Certificate of Public Convenience.

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<sup>8</sup> Executive Order Number 546 for policy and program coordination

The reorganization of the Ministry of Transportation and Communications, by virtue of Executive Order 125/125-A (1987), transferred the functions of vessel registration, vessel safety regulations, and the issuance of the Seafarer Identification Record Book (SIRB) from PCG to MARINA.

Republic Act Number 9295 (the Domestic Shipping Development Act of 2004) prescribed the modernization of domestic shipping and shipbuilding. Under this law, MARINA can investigate any complaint made in writing against the operator, shipper, or group of shippers regarding any matter of violation and, upon notice of hearing, impose such fines, suspend or revoke the certificate of any ship operator, shipper, or group of shippers found to be in violation of the provision of the Act. Again, the nature of the investigation is on fault findings and giving sanctions to those who will be found guilty.

Republic Act Number 10635, approved on 22 July 2013, vested MARINA as the single maritime administration responsible for implementing and enforcing the 1978 international convention on STCW. With this law, MARINA assumed all the powers and functions of the Professional Regulation Commission (PRC), Commission on Higher Education (CHED), Technical Education and Skills Development Authority (TESDA), Department of Health (DOH), and the National Telecommunications Commission (NTC) relative to the all the requirements of Filipino seafarers on STCW.

Executive Order Number 63, signed on 21 September 2018, further strengthened the MARINA's authority as the single maritime administration to implement the international convention on STCW.

MARINA, as a Flag Administration, conducts maritime investigations following the revised Philippine Merchant Marine Rules and Regulations of 1997 (PMMRR). Chapter XIX of the PMMRR, entitled Maritime Investigations and Disciplinary Proceedings, prescribes the rules and procedures for administrative investigations of all maritime-related cases. The objective of the inquiry is to "(a) determine the cause(s) of maritime casualties/incidents/accidents and the adoption of the measures to prevent the recurrence/occurrence of the same; and (b) to establish responsibility



for a casualty or accident or violations of maritime laws, rules and regulations as the basis for legal action.”

On 18 January 2018, under Administrative Order Number 01-08, the Enforcement Service of MARINA was reorganized with the creation of the Marine Casualty Investigation Section (MCIS) as a responsible unit tasked to conduct marine safety investigations following the IMO Casualty Investigation Code. The MCIS investigates marine incidents when a very serious accident happens in Philippine territorial waters or when a very serious marine casualty involving Philippine registered vessels or Filipino seafarers happens outside of Philippine territorial waters. MCIS investigators follow the approved manuals on “Rules of Practice and Procedure in the conduct of a Safety Investigation Involving Marine Accidents/Incidents.”

#### 4.3.1 MARINA’s Jurisdiction

MARINA, as the country’s flag State, conducts marine safety investigations in cases of very serious marine accidents/incidents that occurred within the territorial waters of the Philippines and all the ships flying its flag on international waters. MARINA also investigates occupational accidents involving Filipino seafarers working on other flagships.

#### 4.3.2 MARINA’s composition of Investigating Team and its Procedures for Reporting

When a very serious marine accident/incident happens within the territorial waters of the Philippines involving Philippine registered vessels, the Marine Casualty Investigation Service (MCIS) will inform the concerned party that it will conduct a marine safety investigation. The team of MCIS is composed of:

- Head Investigator
- Member MCIS (Naval Architect)

The report will be reviewed by the Director of the Enforcement Service and the Chief Executive Assistant of the Office of the Administrator following the conclusion of the MCIS investigation. After review, the report will be submitted to the Administrator of

MARINA for his signature before its submission to the Secretary of the Department of Transportation. MCIS will also furnish a copy to the MARINA Public Information Office (PIO), Management Information and Systems Service (MISS), and the Overseas Shipping Service (OSS), who will then make an update on the IMO GISIS module on marine casualties and incidents.

MARINA coordinates with the coastal States and other substantially interested States following the mandatory standards set by the Casualty Investigation Code on cases where very serious marine accidents occurred on Philippine registered vessels in international waters or where Filipino seafarers were involved in accidents/incidents on other flag registered vessels.

The mandates given by the Philippine government to conduct marine investigations started from the Bureau of Customs under RA No. 1937 in 1957. This responsibility for conducting marine investigations was transferred to the Philippine Coast Guard under RA 5173 in 1967 and continued with the passage of RA 9993 in 2010. On the other hand, MARINA, under PD 474, was given the power to investigate through its Administrator any matter within its jurisdictions except for marine casualties that the PCG shall undertake. However, MARINA, the country's flag State, conducts safety investigations as a mandatory requirement under international regulations and to the Organization

## Chapter 5: Challenges and Successes in the Philippines Marine Casualty Investigations

### 5.1 Introduction

This chapter will present the different views of the respondents on the interviews that the researcher conducted. Participants' sociodemographics are presented, followed by the statements on the three themes identified.

### 5.2 Sociodemographic characteristics of participants

Eleven (11) participants from the government, industry, and academia who have experience and expertise in the field of marine casualty investigations in the Philippines participated in the study. The participants include nine (9) males and two (2) females whose ages range from 37 to 60 years old. The shared experience and expertise contributed significantly to the research conducted (See table 2 for participants' sociodemographic details).

During the interviews that were carried out, three primary themes surfaced. The three themes were the overlapping issue between MARINA and PCG, the challenges and success of having two marine casualty investigation bodies, and the need for an independent marine casualty investigation body.

Table 2: Participants' sociodemographic details

Participant	Gender	Age	Professional Background	Organization	Designation	Yrs. of Experience in marine casualty investigation
M1	M	47	Bachelor of Arts in English/ various trainings on maritime safety and casualty investigations	Government	Marine Casualty Investigator	12 yrs.
M2	M	45	Military, Law Enforcement, Flag State Officer	Government	Safety Management	6 yrs.
P1	M	43	Marine Biologist, with 3 yrs. Shipboard experience	Government	Marine Casualty Investigator	9 yrs.
P2	F	37	Legal Officer	Government	Marine Casualty Investigator	3 yrs.
P3	M	50	Military, Law Enforcement, Ship's Captain	Government	Safety Management	None
Pr1	M	60	Master Mariner, Marine surveyor	Shipping Company	Marine Surveyor	7 yrs. as marine surveyors
Pr2	M	53	Master Mariner, Ship surveyor, Flag State Inspector (Panama), Harbor Pilot, MLC2006 Inspector	Shipping Company	Marine Surveyor	12 yrs.
Pr3	F	40	Bachelor in Elementary Education	Shipping Company	Designated Person Ashore (DPA)	3 yrs.
Pr4	M	47	Master Mariner, Marine manager, Designated Person Ashore, Company Security Officer	Shipping Company	Designated Person Ashore (DPA)	12 yrs.
RMG	M	50	Law Enforcement	Government	Investigator	23 yrs. (in other fields of investigations)
RMA	M	57	Former Maritime Administrator	Academia	Professor	None

### 5.3 Overlapping issue between MARINA and PCG

Whenever a maritime accident occurs in the Philippines, the first thing that the owner or Master of the ship who got involved in a marine casualty/incident/accident will do is to inform the nearest Coast Guard station in the area and file a marine protest<sup>9</sup> to MARINA Central Office or its nearest Regional Office. Once they have received the report, both agencies will begin their own verifications and actions, and eventually, they will conduct independent investigations.

Concerning the overlapping responsibilities between MARINA and PCG, five (5) participants believed that there was an overlap. Pr1 and MRG expressed that:

*“Definitely yes, because it is not clear to me if there are two entity or government agency that are conducting this kind of investigation, it is necessary that there must be clear delineation when MARINA will conduct her own and when the PCG will conduct their own because if you apply that to all cases, let say that in every incident the MARINA will conduct and the PCG will conduct, then there is always a conflict on the findings because firstly the investigators, it will depends on their expertise, qualifications or experiences of the investigators, so there will always be a conflict, and it is possible that they would have a different results or conclusions, so I think that there will always be a conflict (Pr1)”*

*“For me, I believe there is as regards to MARINA and PCG [...] the dilemma comes in because one there is no concerted effort between and among agencies conducting marine casualty investigation (RMG).”*

Moreover, one interviewee from the shipping industry goes further and highlights the impact of having two agencies in operations.

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<sup>9</sup> Marine Protest is a written report required for all ship to be submitted to MARINA Central Office or its nearest Regional Office within 24 hours from the occurrence of maritime casualty/incident/accident.

*“[...] there must be only one agency that should conduct marine investigations in the Philippines, just like in other nation. For me, if I should deal with so many agencies, I will be wasting all my time in trying to answer them all, and that will be a very tedious job for the Master, a lot of investigators would be coming, and what will happen? One thing will happen, the ship will be delayed, the ship owner should avoid that because why? Because the charter hire is in effect, and who will suffer? It's the ship owner (Pr4).”*

On the other hand, six (6) respondents agreed that there is no overlapping issue. Both sides of the government have stated that they believe they have the authority to carry out the task, citing the fact that:

*“Because in that PD 474 is clearly say there that when it comes to marine casualty it is the functions of the Coast Guard, but back in 1974 or during the time that PD 474 is being formulated, MARINA was not the Flag State, it was the Coast Guard managing the Philippine Flag then past forward the Flag State was given to MARINA, so it's the MARINA now who is the Flag State of the Philippines, and when we talked about the functions of the Flag State, the MARINA comes in because for every major marine casualty it's the obligation of the Flag State to conduct its investigations. It is inherent to the functions of being a Flag State. So, for now, the MARINA, every time that there is an accident, especially major accidents, it conducts investigation, so that previous provisions that the Coast Guard is to conduct, by virtue of MARINA as the Flag State, the MARINA conducts also (M1).”*

*“Because MARINA also have their circular on marine casualty investigation being a Flag State Authority. Actually, there is a confusion as to the source of the authority as well as who really is the one to conduct marine casualty investigations, because in MARINA their authority is their circular and the Domestic Shipping Act; however, Coast Guard Law is the more recent law than the Domestic Shipping Act. In statutory construction*

*where the present law prevails over the later law, and the source of the casualty investigation for the Philippine Coast Guard is Republic Act Number 9993. So, it was provided there that PCG shall conduct marine casualty investigation involving casualty incidents as long as it fits under the definitions of the international casualty code (P2)."*

Pr3, much like M1 and P2, believes there is no overlapping problem, as stated below:

*"As far as the ship owners is concerned, I don't think that we do not have other concerns with regards to investigation, so far, we are satisfied, and if there are some lacking in their investigations, I told them to enhance further their investigation because that's more favorable to us as ship owners for us to determine the causes and what we are going to do in the future to avoid the same. (Pr3)"*

In summary, six (6) of those who participated in the discussion believed that there were no areas of overlap between the two government agencies responsible for investigating marine casualties. At the same time, the other five (5) believed that both agencies overlap in conducting safety investigations in cases of marine accidents/incidents. These mixed results come from both government representatives and shipping companies.

#### 5.4 Challenges and successes of having two marine casualty investigating bodies

The lack of marine casualty investigators, training of personnel, and budgetary requirements for travel were the common challenges that both government agencies identified. According to P1, P2, and M2:

*"The challenge in the pre-deployment is the transportation cost on how to proceed because we do not know when the accident would happen, the funding is ok if the incident will be in Luzon area, but the real problem is the airfare for faster transport (P1)".*

*“There was programmed budget for the activities, but if for example, last year there were no serious incidents so they will remove the funds for the unit, the budget for the casualty investigation, and here comes the following year that there are so many incidents, so it’s difficult now to manage the budget as there were cuts because of few cases last year (P2)”.*

*“Main challenges are the lack of competent MC Investigators assigned in the office, resources to support travel movement and investigations aids [...] (M2).”*

In addition, M1 finds public interpretation as a big challenge whenever there are very serious marine accidents.

*“When a very serious marine accidents occurs, the public clamors for what happens, how did it happen [...] some of the information, because of the media are being disclosed without validating it thoroughly [...] so that’s the big challenge, the mentality on the public, that if there is a case happens, they want to know the results a day after, of how did it happen. It doesn’t work that way in the international setup, but this is what we have here (M1)”.*

Nevertheless, apart from the difficulties they encountered, M1, M2, and P1 expressed that the results of their safety investigations helped them improve their regulatory safety policies.

*“Now in the safety recommendations, there is where we target on the regulatory requirements set by the MARINA either inappropriate or not properly being implemented or lacking (M1)”.*

*“At the end of every MCI, safety recommendations are formulated for possible consideration into policies to cover the safety issues (M2)”.*



*“We can see the overview of our problems in the maritime safety because we are also recommendatory so we were able to identify the problems with regards to Pre-departure inspections (PDI)<sup>10</sup>, Vessel Safety Enforcement Inspection (VSEI)<sup>11</sup>, Emergency Readiness Evaluation (ERE)<sup>12</sup>, and that is the 3 main aspects in the recommendations which are pointed out (P1).”*

Moreover, P1 and M1 expressed that information sharing and the conduct of joint investigations for both agencies help their investigators.

*“The sharing of information helps to improve our reports, and it also improve their reports because there is information sharing (P1).”*

*“Actually, Coast Guard and MARINA have already done several joint investigations; we already have a joint report that is submitted to the DOTr. On the data gathering, we conducted our own data gathering; we are also conducting information sharing during analysis, we sit on it, we share information, we conduct analysis, we criticize their work, they criticize our findings, so it’s a healthy relationship. (M1).”*

Finally, the report on the findings of safety casualty investigations is treated separately in both agencies. For MARINA, M1 expressed that

*“It is available for public viewing after the IMO has placed into the public, but first we submit it to the IMO secretariat [...] also, on the part of*

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<sup>10</sup> Pre-Departure Inspections (PDI) - mandatory inspections conducted by the PCG to all vessels prior its departure to ensure its compliance to all safety standards.

<sup>11</sup> Vessel Safety Enforcement Inspections (VSEI) - safety inspection conducted by the PCG to all Philippine registered vessels engaged in domestic trade to verify their continuing compliance to certain aspect of seaworthiness in accordance with applicable safety standards, rules and regulations and to safe, fast, efficient and reliable conveyance of passengers and cargoes.

<sup>12</sup> Emergency Readiness Evaluation (ERE) – evaluations conducted by PCG to all Philippine registered vessels to determine their compliance to safety and the readiness of the Officers and crew in responding to any emergency situation on board the vessel while underway or at port.

*MARINA, that's why we make it public, after the report, if other lapses or issues in safety with regards to the company, we provide them the copy of the report, also we provide them with the safety recommendations and they are only given 3 months either to adopt or not to adopt our recommendations, and if they wish not to adopt, they will put their reasons, and if they are going to adopt our recommendations, they would provide us proof that they have adopted it (M1)".*

And for the PCG, P1 expressed that

*"In reality sir, when we have submitted the investigation report, we do not know what happened to the investigation report to where it went after (P1)".*

In short, MARINA and PCG share common problems regarding logistical requirements for the travel of their investigators. Both agencies can review their regulatory safety policies based on the results of their safety investigations. At the same time, sharing information and conducting joint investigations help them improve their respective agencies. However, when it comes to public information on the results of their safety investigations, MARINA sends their report to IMO, and it is the Organization that makes it public through GISIS. In contrast, in the PCG, once their investigation is submitted to a higher authority, they do not know what happens to their report.

## 5.5 Need for an Independent Marine Casualty Investigation Body

On addressing the mandatory requirements of the IMO casualty Code by establishing a separate and independent marine casualty investigation body, almost all interviewees (nine) concurred that the government would benefit from its existence.

*"My opinion, it is very healthy; I am in favor of that because Coast Guard has its own agenda, MARINA has its own agenda. It would be healthy if an independent safety investigation body would conduct an*

*investigation in order to find out what really happened, and the correct information should be released to the public (M1)."*

*"We all know that here in the Philippines, whenever there were incidents, there would always be a pinpointing from one another, so with this new body, that pin-pointing between the Coast Guard and MARINA will not happen (M2)."*

*"Yes definitely [...] actually, it would be best to come up with that particular body or agency or embedded into a particular agency, and I would like to add that, if possible; also it will be composite, there is a lead, but it's composed of various agencies probably it's a multi-agency member like probably from the DOJ for legal, PPN, PCG MARINA, and other experts as well [...] because in that way you can eliminate biases and to come up with a better outcome of the investigation where it is not clouded by any particular biases (RMG)."*

On the other hand, P2 stated that a new law establishing an independent body would not be successful if it did not adequately address the problem.

*"The intent and purpose of our lawmakers are sometimes confusing. Our lawmakers are the ones creating confusion to the government agencies, there are overlapping functions on some government agencies, and it is not the fault of the government agency because they are given the mandate (P2)."*

Finally, from the shipowners' point of view, any creation of another body that would conduct the same investigation for the same purpose would just cause a delay in their operation.

*"If there is going to have a third party or another independent maritime investigator, I think the investigation will take longer and then the report, so we could not immediately process our documents [...] so I think there*

*is no need for a third party, that's for me. We do not need the independent (Pr3)."*

In summary, nine (9) of the respondents are in favor of having a separate independent marine casualty investigation body. In contrast, the other two respondents shared different views on creating another independent body.

## Chapter 6: Discussion

### 6.1 Introduction

The PCG and MARINA, two agencies within the Department of Transportation (DOTr), conduct marine safety investigations following the IMO Code for investigating marine casualties. Both agencies have the same objective, but they pursue it independently.

This chapter will try to answer the research questions on why is it that there are different bodies conducting marine casualty investigations in the Philippines and how effective the current separation of the two agencies to conduct investigations by highlighting its challenges, limitations, and advantages. In the end, the researcher will propose suggestions on how the current separation between MARINA and PCG can be improved to meet the requirements stipulated in the IMO Casualty Investigation Code.

### 6.2 Historical reasons and status of marine casualty investigation in the Philippines

#### 6.2.1 Legal basis of the PCG

The PCG's mandate to carry out marine investigation had been consistently within its powers and functions from the time since its creation as follows:

1. Investigate marine casualties and disasters, including those arising from marine protests filed with the Bureau of Customs relative to the liability of shipowners and officers (R.A No 5173; 1957)
2. Investigate marine casualties and disasters, including those arising from marine protests relative to the liability of shipowners and officers (P.D. No. 601; 1974)

3. Investigate and inquire into the causes of all maritime accidents involving death, casualties, and damage to properties (R.A. No. 9993; 2010)

The only existing agency still mandated by law to conduct investigations and inquiries into marine accidents and casualties is none other than the PCG, according to Section 3 (j) of R.A. No. 9993.

### 6.2.2 Legal basis of MARINA

Section 12 (e) of the Maritime Decree of 1974 outlines the Administrator's Specific Powers and Duties to *“investigate by itself or with the assistance of other appropriate government agencies or officials, or experts from private sector, any matter within its jurisdiction, except marine casualties or accidents which shall be undertaken by the Philippine Coast Guard.”*

Although under the above provisions of MARINA law, the investigations of marine casualties or accidents are the concerns of the PCG, MARINA conducts its marine investigations as the country's flag Administration recognized by the Organization.

MARINA and PCG conduct marine casualty investigations in the Philippines because of the mandates provided by law to both agencies and the different jurisdictions each agency covers. With these two bodies, the country is able to meet its commitments to the requirements mandated by the Organization to investigate every very serious marine casualty.

## 6.3 Effectiveness of the current separation of the two agencies to conduct investigations

### 6.3.1 Opportunities

With MARINA and PCG performing regulatory functions in maritime safety, their conduct of independent marine safety investigations also enables them to assess and check the effectiveness of their respective safety regulations.

In addition, the conduct of joint investigations by the two agencies serves as an avenue for check and balance by sharing their findings to improve the quality of their reports. However, these joint investigations don't occur very often; instead, the two agencies typically carry out their investigations independently.

Regarding international commitments, MARINA, as the flag State, undertakes its mandate following the provisions set by IMO Casualty Investigation Code. The results of the investigation provided by MARINA to the IMO GISIS are made public, providing a good way for people and interested parties to get information. The information shared could aid in the prevention of similar accidents/incidents, which is the primary objective of the Code.

In the same manner, the PCG performs its functions as the Port State and coastal State following the IMO Casualty Investigation Code in cases of very serious marine casualties within the territorial waters of the Philippines. However, recommendations made by the agency from the results of the safety casualty investigations were not made public, unlike in the IMO GISIS, because only MARINA has access to the GISIS module for updating the country's marine casualty investigation reports. Important information that is supposed to be available to the public is a sad missed opportunity to learn from the past accident.

Better coordination or systematic cooperation in investigation and reporting would be a great opportunity to learn from the past accident at domestic and international levels.

### 6.3.2 Limitations

On the issue of overlapping functions in marine casualty investigations, respondents from private shipping companies and government agencies other than PCG and MARINA believe that the confusion is caused by a lack of clear delineation and coordinated effort between these two agencies.

Unlike conducting safety casualty investigations on foreign flag ships where the jurisdictions for both MARINA and PCG are clear, their functions of conducting safety casualty investigations on domestic vessels tend to overlap as each agency conducts its separate investigations for the same purpose. Although this arrangement has some advantages, such as providing a check and balance for both investigating bodies, government resources are ultimately not utilized optimally due to redundant investigations.

For government investigating entities, Selk and Benner (2019) expressed that the interest may be so dominant that it will give their investigations audit-like characteristics. In doing so, any findings that might implicate their organization's weakness in implementing safety measures might affect the results of their investigations to protect their respective organization or personnel. For a marine safety casualty investigation body to be taken seriously, it must be able to function independently of other investigation bodies.

Another limitation identified by a government agency respondent is a lack of properly trained and available marine casualty investigators. Both agencies share this problem as it requires technical people knowledgeable in local and international regulations and investigations. However, hiring these kinds of professionals in the government is hard because people with the expertise mentioned usually prefer to work in the private shipping industry because of the higher salary. Therefore, both government agencies should develop their pool of permanent experts, enhance their competence and skills through training and make them specialized in safety casualty investigations.

Also, because there are two separate marine casualty investigation bodies, it is not able to properly combine maritime casualty reports. However, this issue is addressed on PCG SOP 04-22, where the PCG have to furnish MARINA with their information on all very serious marine casualty incidents/accidents. Despite being in the same language and following the same format, reports from both entities require enhanced streamlining.



## 6.4 Recommendations for improvement of maritime casualty investigations in the Philippines

### 6.4.1 MARINA and PCG to have a joint parallel investigation in all cases of very serious marine casualty

In the absence of an independent board, both agencies must have a permanent pool of investigators and upscale their technical expertise through continuous training and collaborative efforts. It is preferable for both authorities to conduct a parallel inquiry for every very serious marine casualty (the two investigations and reports would be merged and provided to IMO). This would prevent requests for witnesses and access to evidence from being in conflict with one another, which is required by chapter 9 of the Casualty Investigation Code.

They do not need to conduct two separate inquiries because both organizations have the same goals in carrying out safety casualty investigations. In the same way, in circumstances of very serious marine casualty, only one report is submitted to the IMO. This option would facilitate the transition towards the establishment of a single investigation body,

### 6.4.2 Passage of Philippine Transport Safety Board (PTSB)

A proposed law in the Philippines during the last 18<sup>th</sup> congress, which passed its third reading on 01 June 2021, seeks to create the Philippine Transport Safety Board (PTSB). Said Board is a non-regulatory and independent agency whose main job is to conduct impartial investigations on all modes of transportation accidents/incidents. The same concept is practiced in other countries with an independent transport safety board. Unfortunately, the new President vetoed the proposed law on 29 July 2022.

There is a need to revisit this proposed law and further promote the establishment of a single PTSB to address safety issues in all modes of transportation. This board will provide the country with a permanent independent investigating body that is free of any interest and whose primary focus is investigative findings that will ultimately make recommendations from an objective point of view to prevent future accidents.

In the same manner, establishing an independent marine safety casualty investigation body under this proposed PTSB will eventually remove the public view of conflicting issues between MARINA and PCG in conducting marine safety investigations in the Philippines' domestic fleet. Its creation will also help to boost the Philippines' reputation in its performance of maritime casualty investigations in compliance with the country's commitment to international obligations.

## Chapter 7: Conclusion

In the absence of an independent marine safety casualty investigation body in the Philippines, MARINA and PCG perform marine casualty investigations in all cases of very serious marine accidents/incidents. Their functions in carrying out their mandates are rooted in the statute that establishes the agency. Following the mandate of the IMO Casualty Investigation Code, the country's commitment to the Organization and the international community is conducted by these two investigating bodies with satisfactory results. However, marine casualty investigation in domestic fleets creates confusion for some local shipping companies as the two agencies conduct separate independent investigations but with the same objectives.

These two government agencies must resolve this confusion in marine casualty investigation in the domestic fleet to ensure that adequate and reliable investigations are carried out better to meet the requirements of the IMO Casualty Investigation Code. Further, based on the gathered data and information, it is recommended that a separate, independent, and non-regulatory investigation body, like the proposed Philippine Transport Safety Board, be established to have a reliable marine safety casualty investigation body in the Philippines.

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## Annexes

### Annex A: Extract from Resolution A.996(25)

28 Personnel responsible for, or performing, surveys, inspections and audits on ships and companies covered by the relevant IMO mandatory instruments should have as a minimum the following:

.1 appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certified ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency and have maintained their technical knowledge of ships and their operation since gaining their certificate of competency; or

.2 a degree of equivalent from a tertiary institution within a relevant field of engineering or science recognized by the State

36 Depending on the function(s) to be performed the qualification should encompass:

.1 knowledge of applicable international and national rules and regulations for ships, their companies, their crew, their cargo and their operations;

.2 knowledge of the procedures to be applied in survey, certification, control, and investigative and oversight functions;

.3 understanding the goals and objectives of the international and national instruments dealing with maritime safety and protection of the marine environment, and of related programmes;

.4 understanding of the processes both on board and ashore, internal as well as external;

.5 possession of professional competency necessary to perform the given task effectively and efficiently;

.6 full safety awareness in all circumstances, also for one's own safety; and

.7 training or experience in the various tasks to be performed and, preferably, also in the functions to be assessed.

## Annex B: PCG Implementing Rules and Regulations

*Rule 3 (j) To investigate and inquire into the causes of all maritime accidents involving death, casualties and damage to properties.*

*Rule 3 (j) 1. The PCG, through the Board of Marine Inquiry (BMI) and other offices with associated functions that may hereinafter be created by the PCG, shall be the country's maritime casualty investigating authority responsible for conducting investigations on maritime accidents involving death, casualties, and damage to properties occurring within waters subject to the jurisdiction of the Philippines and those involving vessels of Philippine registry. In the performance of this function, the PCG shall promulgate the necessary rules and regulations, subject to the approval of the DOTC Secretary.*

*Rule 3 (j) 2. The conduct of maritime casualty investigation shall conform to international standards as recommended by the "Code of the International Standards and Recommended Practices for Safety Investigations into a Marine Casualty or Marine Incident" of the International Maritime Organization (IMO).*

*Rule 3 (j) 3. To enhance cooperation with other international and national maritime safety agencies, the results of the investigation conducted shall be published in the proper forum and shall be submitted to the IMO or any substantially interested state.*

*Rule 3 (j) 4. The conduct of maritime casualty investigation by the PCG is separate and distinct from any other form of investigation involving civil, criminal and administrative proceedings. The primary purpose of such investigation shall be to: (i) identify the circumstances surrounding the marine incident, (ii) determine the causes and contributing factors, and (iii) make appropriate recommendations and/or adopt measures to prevent the occurrence of similar accidents.*

*Rule 3 (j) 5. All maritime casualty investigation records in the possession of the PCG may be disclosed in criminal, civil, disciplinary proceedings upon orders of competent courts or upon written request duly approved by competent authority in accordance with existing rules and regulations.*

*Rule 3 (j) 6. The PCG shall conduct an investigation for every maritime casualty incident involving but not limited to the following:*

- a. The death of, or serious injury to a person;*
- b. The loss of a person from a ship;*
- c. The loss, presumed loss or abandonment of a ship;*
- d. Material damage to a ship;*
- e. The stranding or disabling of a ship, or involvement of a ship in a collision;*
- f. Material damage to marine infrastructure external to a ship that could seriously endanger the safety of a ship, or involvement of a ship in a collision;*



*g. Severe damage to or the potential for severe damage to the environment*

*Rule 3 (j) 7. The submission of marine protest shall be mandatory from any person/entity responsible for the vessel, watercrafts and other conveyances, within twenty four (24) hours upon the occurrence of any maritime accidents, grounding, founding criminalities on board, and other unusual incidents or accidents involving risk on the safety and security of life and property at sea.*

*Rule 3 (j) 8. In the performance of the aforementioned function, PCG investigators are authorized to board a ship, interview the Master and crew and any other person involved, and if necessary, hold or suspend the departure of the vessel to acquire evidentiary materials for use in the maritime casualty investigation.*

*Rule 3 (j) 9. In cases of hazardous incidents or when an accident nearly occurs in connection with the operation of the vessel ("near miss" incidents), the PCG shall formulate the necessary guidelines for the disposition of such cases.*

*Rule 3 (j) 10. The PCG shall, within ninety (90) days upon the approval of this IRR, promulgate and publish the appropriate guidelines and procedures covering maritime casualty investigation.*

## Annex C: Powers and Functions of MARINA under EO 1011 issued on 20 March 1985

*a. to identify, establish, prescribe and regulate routes, sailing schedules and frequencies, types of service, economically viable capacities, and zones or areas of operation of public water transportation services, such as those provided by commercial vessels engaged in inter island liner shipping. This is provisional upon the establishment of routes and areas of operation in accordance with the domestic public water transportation development plans and programs, approved by the Ministry of Transportation and Communications;*

*b. to issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits, authorizing the operation of public water transportation services, including the prescription of appropriate terms and conditions. This is on condition that in the case of tramping or non-liner operations, the powers and functions enumerated in the preceding and succeeding paragraph shall not apply;*

*c. to determine, fix and approve, periodically review and adjust, reasonable passenger fares, freight rates and other related charges, relative to the operation of domestic public water transportation services engaged in liner shipping;*

*d. to issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it has jurisdiction, and in which cases the pertinent provisions of the rules of Court shall apply;*

*e. to punish for contempt of the Authority, both directly and indirectly, in accordance with the pertinent provisions of, and the penalties prescribed by the Rules of Court;*

*f. to issue subpoena duces tecum and to summon witnesses to appear in any proceedings of the Authority to administer oaths and affirmations, and in appropriate cases, to order the search and seizure of all vessels and documents as may be necessary for the proper disposition of the case before it; and*

*g. to impose fines and or penalties for violation of this order, or any other laws, rules and regulations being implemented by the Authority, or its orders, decisions and/or rulings.*

## Appendices

### Appendix A: Interview Questions for Head of the Office in the MARINA, PCG and PNP-MG Marine Casualty Investigation Unit/Service, Head of Maritime Safety Departments, and Resource Experts in Marine Casualty Investigation

#### **I. Sociodemographic**

1. What is your age?
2. What gender do you identify as?
3. What is your professional background?
4. What is your job position in your organization/company?
5. How many years have you been in your current job position?
6. What are your experiences as a marine casualty investigator?

#### **II. How marine casualty investigations are conducted**

1. What kind of expertise do you think best suit to become a marine casualty investigator?
2. Is it only the very serious type of marine accidents that you investigate, or you conduct your investigation on all types of marine accidents?
3. Do you exchange information about the investigations with other bodies before/during/after the investigations?
4. How do you make your coordination with other government agencies conducting marine casualty investigation?
5. How do you kept the findings of your investigation? Is it available for public information?

#### **III. Overlapping between MARINA and PCG**

1. Do you see overlapping functions of the MARINA and PCG in the conduct of marine casualty investigation in the Philippines? Yes/No, if yes, with regards to what aspects? How about the PNP-MG?
2. Is there any case in which just one agency conducts the investigation? In which cases?
3. What are the limitations/challenges of having two separate agencies to conduct investigations? What are the benefits?
4. As MARINA and PCG are both government agencies performing regulatory functions in maritime safety, are you in favor of having a separate independent maritime casualty investigation body in the country? If yes/no, can you elaborate your opinion?
5. What are the issues and challenges do you usually encountered in the performance of your duties as head of the Safety Division of your agency with regards to the marine casualty investigation?

#### **IV. Effectiveness of marine casualty investigations**

1. Why do you think that the maritime casualty investigation in the Philippines is being performed by the MARINA, PCG and PNP-MG?

2. How do you come up with safety regulations based on the findings from the marine casualty investigations? Can you give some example on the changes in safety regulations as a result of the investigations?
3. What is your opinion about having a separate independent marine casualty investigation body in the Philippines?
4. In your opinion, how can the current practice of the marine casualty investigation in the Philippines be improved?
5. How can our country achieved the requirements set by the IMO Marine Casualty Investigation Code?

## Appendix B: Interview Questions for MARINA, PCG and PNP-MG Marine Casualty Investigators

### **I. Sociodemographic**

1. What is your age?
2. What gender do you identify as?
3. What is your professional background?
4. What is your job position in your organization/company?
5. How many years have you been in your current job position?
6. What are your experiences as a marine casualty investigator?
7. What are your qualifications for becoming a marine casualty investigator?
8. Where did you take your training to become a marine casualty investigator?
9. How long have you been conducting marine casualty investigation?

### **II. How marine casualty investigation are conducted**

1. How have you been trained as a casualty investigator? When? Do you have any certification? What does that certification entitle you to do?
2. As a maritime casualty investigator, what are the issues and challenges do you usually encountered when doing your job as an investigator?
3. As a marine casualty investigator, what are the rewarding aspects of your role?
4. Is it only the very serious type of marine accidents that you investigate, or you conduct your investigation on all types of marine accidents? Please, elaborate or provide examples
5. How do you keep the findings of your investigations? Is it available for public information?
6. During the investigations, do you interact with other casualty investigation bodies? What is that interaction look like?
7. Do you exchange information about the investigations with the other bodies before/during/after the investigations? Please, elaborate or provide examples

### **III. Overlapping between MARINA and PCG (and PNP-MG)**

1. Is there any case in which just one agency conducts the investigation? In which cases?
2. Are all investigations in Philippines conducted by MARINA, PCG and PNP-MG? How are the investigations assigned?
3. Do the three bodies meet regularly? Do the three bodies receive the same kind of training?
4. Is having a separate marine casualty investigation bodies impact on your daily tasks as an investigator? Why and how?
5. What are the limitations/challenges of having two separate agencies to conduct investigations?
6. What are the benefits of having two separate agencies to conduct investigations?

### **IV. Effectiveness of marine casualty investigations**

1. What is your opinion about having different separate maritime casualty investigation bodies in the Philippines?
2. Why do you think that the maritime casualty investigation in the Philippines is being performed by the MARINA, PCG and PNP-MG?

3. Are you in favor of having a separate independent marine casualty investigation body in the Philippines? If yes/no, can you elaborate further your position on these?
4. In your opinion, how can the current practice of the marine casualty investigation in the Philippines be improved?
5. How can our country achieved the requirements set by the IMO Marine Casualty Investigation Code?

## Appendix C: Interview Questions for Safety Officers from Private Shipping Companies

### **I. Sociodemographic**

1. What is your age?
2. What gender do you identify as?
3. What is your professional background?
4. What is your job position in your company?
5. How many years have you been in your current job position?

### **II. How marine casualty investigation are conducted**

1. How do marine casualty investigators from the Philippine government approach your company for the conduct of marine casualty investigation?
2. How do you deal with the marine casualty investigators coming from the government agencies?
3. What are the issues and challenges do you usually encountered when dealing with marine casualty investigators coming from the government agency?
4. Is there any case of intimidation on the part of the investigators? If yes, can you cite some examples?
5. How do marine casualty investigators conduct their investigations in your vessel?

### **III. Overlapping between MARINA and PCG (and PNP-MG)**

1. Is there any case where more than one government agency conducts marine casualty investigation on your ship/ships? Can you further elaborate what government agency is that and how they approach your company?
2. Why do you think that the marine casualty investigation in the Philippines is being performed by the MARINA, PCG and PNP-MG?
3. Do you see any overlapping functions of the MARINA and PCG in the conduct of marine casualty investigation in the Philippines? Yes/No, if yes, with regards to what aspects? How about the PNP-MG?
4. Do MARINA and PCG follows the same procedures when they conduct their marine casualty investigation or they differ in some ways? Can you give some examples on these?
5. Have you experienced any parallel investigations from PCG and MARINA? On what case and how was it done?

### **IV. Effectiveness of marine casualty investigations**

1. What is your opinion about having different separate marine casualty investigation body in the Philippines?
2. What are the challenges of having separate marine casualty investigation bodies?
3. What are the benefits of having separate marine casualty investigation bodies?
4. Are you in favor of having a separate independent marine casualty investigation body in the Philippines? If yes/no, can you elaborate further your position on these?
5. In your opinion, how can the current practice of the marine casualty investigation in the Philippines be improved?

