Proposed system for marine casualty investigation in the Philippines

Edita A. Rafer

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PROPOSED SYSTEM FOR
MARINE CASUALTY INVESTIGATION
IN THE PHILIPPINES

by

EDITA A. RAFER

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
General Maritime Administration

Year of Graduation

1991
I certify that all materials in this dissertation which are not my own work have been identified and that no material is included for which a degree has been previously conferred upon me.

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

Supervised and assessed by:

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Professor
World Maritime University

Co-assessed by:

Lou A. Colucciello
Visiting Professor
World Maritime University
ACKNOWLEDGMENT

Allow me, please, to express my heartfelt gratitude to:

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- My friends who continuously inspired me with letters enough to console me and make me withstand the hardship of my studies and stay miles away from home;

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- The World Maritime University, under the auspices of the International Maritime Organization, for bestowing upon me the specialized knowledge and skill that I need most for my professional growth.

For all of them, I do wish 'more power and prosperity'.
Dedication

to

A Maritime Nation - THE PHILIPPINES
INTRODUCTION

1. Background Information

Accidents at sea are prone to attract public attention. Those particularly involving loss of human lives are always of concern in public policy and no society (including that of the Philippines) is likely to view this concern as misplaced.

Approximately 1,400 lives are thought to have been lost in major Philippine shipping accidents from 1988 to 1989, not to mention the earlier sensational MV "Dona Paz", MV "Marilyn" and MV "Don Juan" incidents which claimed no less than a thousand lives in each case. But, the Philippine Government is hampered in its attempt to maximize the use of public resources for transport safety due to lack of information. It is not known, for example, how many lives could be saved per unit of expenditure on safety interventions.

The event that unfolded on the evening of 20 December 1987, while the passenger-vessel MV "Dona Paz" was underway within the Philippines from Tacloban City to Manila took to task the entire system of the country as regards transport safety, administrative capability and criminal culpability.

Faced with a casualty list from a minimum of 1,850 to a maximum of 4,000 drowned passengers (the former number
from the shipping company, the Sulpicio Lines, and the latter from the claimants/relatives of the passengers), recriminations were levelled at various offices—the Maritime Industry Authority (MARINA), the Philippine Coast Guard (PCG), the Department of Transportation and Communications (DOTC), and the shipping company/owner of MV "Dona Paz". Inquiry Committees were formed by the MARINA, PCG, the Presidential Office, the Senate and House of Representatives.

Amidst all the atmosphere of charges and countercharges, there is the distinct observation that these committees had interests to protect and reputation to build on. The PCG issued clearance for the vessel to sail, MARINA had awarded the franchise to the company to operate the vessel on the route, and the Executive and Legislative Offices had constituents to appease.

A positive question is, therefore, posed as to whether there is an independent agency to adjudge and prescribe safety standards on sea transport and, in incidents of lost lives and property, to investigate the causes of such occurrences.

Hence, there is really an imperative need for a study on marine casualty investigations in order to be able to wisely elect which system shall be deemed proper and appropriate for the Philippines. A structure which shall serve as the forum for the evolution of rules, regulations, and recommendations for the advancement of transport safety has to be proposed. Likewise, innovative
methods and techniques in the investigation process should be introduced, aimed at effectively determining the magnitude, causes, and possible remedies for marine accidents/ incidents.

2. Problem Areas

This Study sees the following problem areas, to wit:

2.1 Apparent overlapping of functions between the Maritime Industry Authority (MARINA) and the Philippine Coast Guard (PCG), otherwise known as the Maritime Administration and the Maritime Safety Administration, respectively, in matters of safety regulations e.g. the registration and inspection of ships, as well as, of casualty investigations.

2.2 Possibilities of conflict of interest in the exercise of the investigative powers by MARINA and PCG, both being regulatory bodies.

2.3 The need for advanced and continuing education/training programs for investigation officers.

2.4 The need for new methods and techniques by which the investigation process in the Philippines could be effectuated with much proficiency.

2.5 Budgetary constraints.
3. Objectives

Having identified the problem areas, this study seeks to achieve the following objectives within the Philippine perspective:

3.1 To introduce a more appropriate and adequate marine casualty investigation system in the Philippines.

3.2 To identify the legislative and administrative needs in the furtherance of the system.

3.3 To improve the investigative processes/procedures.

4. Methodology

This study shall be based on:

4.1 Studies on the profile of other countries' maritime casualty investigation systems undertaken by certain resource persons.

4.2 Reference materials available at the World Maritime University library.

4.3 The personal knowledge of the author as an experienced legal officer of MARINA and supported by documents/papers made available to her by said office.
4.4 Field studies conducted with the various ports and shipping administrations of other countries.

4.5 Extended field-study programs at the United States Coast Guard, National Transport Safety Board, and Canadian Transport Accident Investigation Safety Board.


"PROPOSED SYSTEM FOR MARINE CASUALTY INVESTIGATION IN THE PHILIPPINES"

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Chapter I

MARITIME ACTIVITIES AND CASUALTIES IN THE PHILIPPINES

By way of statistical data and analysis, this Chapter will give a clear picture about the flow of maritime activities and casualties in the Philippines. First, attempts will be made to answer questions leading to proof that the archipelagic country is a maritime potential. Such queries are: What is the volume in tonnage of the Philippine merchant fleet? and, how and to what extent does the shipping industry influence the national economy?. Then, the figures as to the marine casualty rates shall be accounted for. Likewise, case reports on some marine accidents, which have attracted much public attention, shall be cited. The probable contributory factors to these accidents will be identified herein. All these are essentially relevant and material information, preliminary to the main subject matter— that is, the Marine Casualty Investigation System in the Philippines.

1. The Philippine Merchant Fleet

1.1 Domestic Operating Fleet

MARINA's inventory shows a total domestic shipping fleet of 8,798 ships as of 1987 (table 1) with a gross
Table 1  
Domestic Operating Fleet, 1987

<table>
<thead>
<tr>
<th>Vessel Type</th>
<th>No. of Ships</th>
<th>Total GRT</th>
</tr>
</thead>
<tbody>
<tr>
<td>passenger cargo</td>
<td>206</td>
<td>33561.90</td>
</tr>
<tr>
<td>passenger ferries</td>
<td>209</td>
<td>63069.90</td>
</tr>
<tr>
<td>cargo ships</td>
<td>2103</td>
<td>275331.00</td>
</tr>
<tr>
<td>passengers &amp; pure containers</td>
<td>20</td>
<td>43553.80</td>
</tr>
<tr>
<td>barges</td>
<td>534</td>
<td>214531.00</td>
</tr>
<tr>
<td>fishing</td>
<td>4815</td>
<td>158010.00</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>7987</strong></td>
<td><strong>790057.60</strong></td>
</tr>
<tr>
<td><strong>Others a/</strong></td>
<td><strong>811</strong></td>
<td><strong>156021.40</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8798</strong></td>
<td><strong>946079.00</strong></td>
</tr>
</tbody>
</table>

a/ In order of fleet size - pleasure yachts, general purpose, tugs and others.

Source: MISS, MARINA
tonnage of 946.079; the three largest groups of which were general cargo, fishing vessels, and barges amounting totally to 84.69% and, of these, fishing vessels accounted for over 50%. In terms of GRT, general cargo vessels accounted for the largest share, 29.10%, followed by barges and fishing vessels representing 22.68% and 16.70%, respectively.

There were 71 major domestic shipping companies operating as of September 1982—21 of which were engaged in liner operations and lighterage, and the rest in tramping. The liner fleet was dominated by the Conference of Inter-island Shipowners and Operators (CISO) member companies, consisting of 17 member lines owning at least 75% of the domestic liner fleets. In 1975, liner tonnage comprised 27% of the total fleet but, in the early 80s, it decreased to 25%. On the other hand, tramp tonnage capability increased from 55% to 63% within the same period.

Most of the ships had been imported second-hand from Japan and most of these were antiquated. In table 2, it can clearly be observed that the age of Philippine domestic vessels fall in the 20 to 25 years bracket, with the exception of passenger containers/RoRo which are just a mere 11 years. The latest figures (table 2) show that of the total number of liner vessels operated by CISO, 39% is accounted for by cargo container vessels, followed by passenger breakbulk and passenger container vessels representing 26% and 15%, respectively.

The fleet, which consisted mostly of conventional
<table>
<thead>
<tr>
<th>TYPES</th>
<th>NUMBER OF VESSEL</th>
<th>G R T</th>
<th>N R T</th>
<th>D W T</th>
<th>AVERAGE AGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger-Break Bulk</td>
<td>25</td>
<td>21,739.43</td>
<td>9,803.66</td>
<td>12,280.68</td>
<td>25.52</td>
</tr>
<tr>
<td>Passenger-Container</td>
<td>17</td>
<td>40,472.65</td>
<td>20,231.41</td>
<td>31,509.55</td>
<td>21.62</td>
</tr>
<tr>
<td>Passenger-Break Bulk/Container</td>
<td>1</td>
<td>2,863.60</td>
<td>1,108.30</td>
<td>1,982.30</td>
<td>23.00</td>
</tr>
<tr>
<td>Cargo-Break Bulk</td>
<td>11</td>
<td>9,992.87</td>
<td>6,029.32</td>
<td>10,072.08</td>
<td>22.70</td>
</tr>
<tr>
<td>Cargo-Container</td>
<td>44</td>
<td>107,132.95</td>
<td>68,938.78</td>
<td>171,751.45</td>
<td>20.02</td>
</tr>
<tr>
<td>Passenger-Break Bulk/RORO</td>
<td>4</td>
<td>3,656.73</td>
<td>1,672.75</td>
<td>2,626.69</td>
<td>20.25</td>
</tr>
<tr>
<td>Passenger-Container/RORO</td>
<td>12</td>
<td>64,080.45</td>
<td>32,540.17</td>
<td>23,224.94</td>
<td>16.60</td>
</tr>
<tr>
<td>Container/RORO</td>
<td>1</td>
<td>2,347.87</td>
<td>813.81</td>
<td>3,249.06</td>
<td>10.00</td>
</tr>
<tr>
<td>No Information</td>
<td>1</td>
<td>6,523.23</td>
<td>3,672.25</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>116</strong></td>
<td><strong>258,809.78</strong></td>
<td><strong>144,810.45</strong></td>
<td><strong>256,696.75</strong></td>
<td></td>
</tr>
</tbody>
</table>

Note: 1/ For 24 vessels only  
2/ For 8 vessels only  
3/ For 10 vessels only  
4/ For 41 vessels only  
5/ For 11 vessels only  
6/ For 10 vessels only
types in 1975, developed with the acquisition of several container vessels and the conversion of some conventional types into semi- or fully-containerized vessels.

Containerization for interisland trade was started in the Philippines by the Aboitiz Shipping Corporation. As of 1987, there were 52 fully and semi-containerized vessels owned by CISO member companies serving the domestic trade (table 3). At present, a majority of the ships currently used for domestic container operation in the country have been converted from general cargo or lumber carriers, which were similarly imported second-hand from Japan. The domestic container vessels are relatively small compared to international ships such that their capacities only range from 48 to 236 TEUs, the lengths between 67 to 107 meters, and depths just under 6 meters. Most of them lack adequate shipborne equipment, like derricks, for container operation. There are a good number of them which handle non-standard containers. In terms of per vessel capacity, therefore, there is much to be desired from the country’s existing fleet of domestic container vessels, and this limits the efficiency in handling large volumes of cargo per trip per vessel. Another limitation is the fact that their speeds, which are usually between 11 to 14 knots, are also relatively slow by international standards.

Aside from the CISO vessels, which generally cater to long-distance routes (200 NM or more), there is a large fleet of short-distance passenger-cargo ferries mainly domestically-built and wooden-hulled. From 1987, MARINA
Table 3
Container Fleet as of 1987

<table>
<thead>
<tr>
<th>Owner</th>
<th>No. of Vessels</th>
<th>Capacity (TEU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboitiz Shipping</td>
<td>8</td>
<td>1,436.00</td>
</tr>
<tr>
<td>William Lines</td>
<td>8</td>
<td>1,010.00</td>
</tr>
<tr>
<td>Negros Navigation</td>
<td>3</td>
<td>674.00</td>
</tr>
<tr>
<td>Lorenzo Shipping</td>
<td>11</td>
<td>524.54</td>
</tr>
<tr>
<td>Sulpicio Lines</td>
<td>18</td>
<td>1,602.50</td>
</tr>
<tr>
<td>Solid Shipping</td>
<td>3</td>
<td>no data available</td>
</tr>
<tr>
<td>Sweet Lines</td>
<td>1</td>
<td>66.00</td>
</tr>
</tbody>
</table>

Total 52 5,313.00

Source: MISS, MARINA
records show a fleet of 310 ferries. The term 'Ferry' as applied here covers ships of 15 to 250 GRT on routes under 4 hours and also includes a few larger ships on short routes.

1.2 Overseas Fleet

The structure of the overseas shipping fleet in 1989 may be illustrated by the nature of the vessels comprising it. Bulk carriers are the most numerous, comprising 63% of the total and about 18% are general cargo ships (table 4).

In 1975, there were only 25 registered Filipino companies engaged in overseas shipping. To date, there are about 185 such companies. From a total of 62 registered vessels in 1975, the Philippine merchant fleet grew to 427 in 1989. In terms of total deadweight capacity, the fleet likewise expanded to 16 times its size from 0.878 million tons to 14.16 million tons over the same period. The average size of vessels of 8,955 dwt tons in 1975 had increased to 17,570 dwt tons in 1981. As to age, Filipino-registered vessels averaged 16.05 years in 1978, 11.63 years in 1981, and 8.63 years in 1989.

This indication of a relatively younger fleet has been largely influenced by keen competition for such vessels and by the requirement of age of vessels for acquisition, either through importation or bareboat chartering.
<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>1986</th>
<th>1987</th>
<th>1988</th>
<th>1989</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk Carrier</td>
<td>453</td>
<td>208</td>
<td>278</td>
<td>298</td>
</tr>
<tr>
<td>General Cargo</td>
<td>90</td>
<td>87</td>
<td>67</td>
<td>76</td>
</tr>
<tr>
<td>Tanker</td>
<td>16</td>
<td>17</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Multi-purpose Carrier</td>
<td>16</td>
<td>13</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Car carrier</td>
<td>8</td>
<td>12</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>Livestock Carrier</td>
<td>11</td>
<td>10</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Log Carrier</td>
<td>19</td>
<td>17</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Others 1)</td>
<td>29</td>
<td>35</td>
<td>53</td>
<td>39</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>397</td>
<td>469</td>
<td>472</td>
<td>427</td>
</tr>
</tbody>
</table>

1) Includes reefer vessels, OBO/COBO, RORO-container vessels and a few others.

Source of basic data: MARINA
2. The Economic Significance

Transportation is considered as a basic component in the development of the economy. In an archipelagic setting like that in the Philippines, the need for a developed maritime transportation system, being the cheapest and most logical means of moving goods and people from one place to another, is very essential. Thus, the industry plays a vital role in promoting inter-regional trade and economic integration. It contributes to the growth in business and industries.

The development of shipping, therefore, is a reflection of the overall economic climate. Records of the National Census and Statistics Office indicate that the shipping industry accounted for 25% of the country’s total coastwise trade. Given the 5% projected annual growth of the economy, industry sources predict that cargo volume will rise annually by 7% until the year 2000. The increasing trend of cargo traffic is reflective of the improvement in the economy and the increase in interisland trading activities. Shipping is an extended arm of production and marketing abroad, which constitutes an important infrastructure of the country’s economy. It generates foreign exchange earnings and the potential ability to enhance the competitiveness of Philippine exports and reduce the negative effects of the country’s import trade through adequate and efficient costs.

Philippine external trade has always predominantly moved on a tramp/bulk rather than on a liner basis. Prior to 1974, Philippine flag ships carried only 7.8% of
<table>
<thead>
<tr>
<th>NATIONALITY OF CARRIER</th>
<th>1989</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RANK</td>
<td>VALUE</td>
</tr>
<tr>
<td>Panama</td>
<td>1</td>
<td>1,010,064,268</td>
</tr>
<tr>
<td>American</td>
<td>2</td>
<td>968,515,869</td>
</tr>
<tr>
<td>Filipino</td>
<td>3</td>
<td>836,539,946</td>
</tr>
<tr>
<td>Singaporean</td>
<td>4</td>
<td>469,652,353</td>
</tr>
<tr>
<td>Japanese</td>
<td>5</td>
<td>367,642,148</td>
</tr>
<tr>
<td>Liberian</td>
<td>6</td>
<td>265,437,937</td>
</tr>
<tr>
<td>Chinese (PROC)</td>
<td>7</td>
<td>242,928,913</td>
</tr>
<tr>
<td>Taiwanese</td>
<td>8</td>
<td>228,262,152</td>
</tr>
<tr>
<td>Danish</td>
<td>9</td>
<td>190,054,548</td>
</tr>
<tr>
<td>German (FED.)</td>
<td>10</td>
<td>176,336,036</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td>1,132,667,887</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>5,888,102,247</strong></td>
</tr>
</tbody>
</table>

Source: Trade Branch, NSO

Note: Craft
Philippine trade volume; the balance of 92.2% was carried by foreign flag lines. In 1981, Philippine flag vessels registered a total carriage volume of 15% of the total Philippine foreign trade. In terms of value carried, Philippine flag vessels carried 17.8% in 1974 but by the end of the third quarter of 1981, the total value of trade moved up to the amount of 21%.

Table 5 shows the top ten carriers of Philippine exports by watercraft in 1988 and 1989. For the two-year period, the Philippine flag carriers only ranked third with only 14.21% share in 1989. First and second were Panamanian and American vessels with 17.15% and 16.45% shares, respectively.

On the import side, Philippine flag carriers accounted for just 14.58% of the total value; the 85.42% was carried by foreign flag lines with the Panamanian vessels representing 19.10% of the total imports (table 6).

Containerization was started in 1976 with only one vessel having a capacity of 120 TEUs. In 1978, containerized cargo accounted for 3.6% of the country's total domestic trade in terms of metric tons. A significant increase was noted in 1981 when containerized cargo amounted to a total domestic trade equivalent of 21.5%.

The growth of container trade in TEUs over a seven-year period (1974-1981) posed a positive indication. Registering an average annual increase of 20.28% for export cargoes and 24.86% for import commodities, total TEUs
<table>
<thead>
<tr>
<th>NATIONALITY OF CARRIER</th>
<th>1987</th>
<th>% SHARE</th>
<th>1988</th>
<th>% SHARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panamanian</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filipino</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>American</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singaporean</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberian</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Japanese</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taiwanese</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese (PROC)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Russian</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greek</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Korean</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>8,427,112,911</td>
<td>100.00</td>
<td>6,317,141,848</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Trade Branch, NSO

Watercraft
handled amounted to 98.243 in 1974 increasing by 158% in 1980. The structural shift of Philippine export cargoes from raw materials to semi-processed and processed cargoes promises greater growth rates in this direction.

3. Marine Casualties

Shipping is a service-oriented industry. The shipowners guarantee safe and comfortable travel in exchange for the money paid by the shipper or passenger. The obligation of the shipowner starts at the time the passenger sets foot on the gangplank up to the time the said passenger disembarks from the vessel at its destination. Similarly, the obligation of the shipowner starts from the time the cargo is loaded on to the vessel and ends when the said cargo is discharged at its intended destination. Attached to such great responsibilities are equally great uncertainties.

More often than not, however, it is always the shipowner who is likely to be blamed when sea mishaps occur - substandard vessels, poor life saving facilities, inexperienced and inefficient crew, etc. These are the usual criticisms against the poor shipowners.

If one takes a look at the whole set-up, however, one gradually comes to realize that it is not only the shipowner that is to blame. The maritime administration, the Coast Guard, the shipbuilder, the classification societies, even the shippers and passengers have their share of responsibilities. Poor implementation of safety
regulations is often the root of the tragedies.

The Philippines, which is more maritime-oriented than many nations in the world, can be said to have experienced sensational tragedies in its waters. MVs "Don Juan", "Dona Marilyn" and "Dona Paz" accidents are just a few of the marine casualties that have claimed thousands of lives and are now recorded as the worst disasters in the history of the Philippine seas. In addition, strangely, safety regulations were rigidly imposed immediately after the occurrence and then these slowly died a natural death until such time as another accident happened; in which case, the same regulations were passed but the cycle moved on.

Table 7 shows the number of domestic vessels and persons involved in marine casualties in 1988 and 1989. The number of accidents from 1988 to 1989 increased by 34%. The only favorable indication in the statistics, although not really, is the reduction in the rate of casualties. The accidents took 1,836 persons in 1989, 29% less than the 1988 figure of 2,502 people. Vessels referred to in the chart ranged from 10 GRT and above and were involved in minor and major accidents.

It is worth mentioning at this juncture that, in most of Philippine marine accidents, the vessels involved could be said to be either overloaded/overcapacity or too old to be safe to sail, or both; and that, normally, even the actual total number of passengers as well as the exact figure of lost lives could not be ascertained afterwards.
### TABLE 7

**NUMBER OF DOMESTIC VESSELS AND PERSONS INVOLVED IN MARITIME CASUALTIES 1989 AND 1988**

<table>
<thead>
<tr>
<th>KIND OF MARITIME ACCIDENTS</th>
<th>1989</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drifted (Engine Trouble)</td>
<td>26</td>
<td>22</td>
</tr>
<tr>
<td>Aground</td>
<td>36</td>
<td>30</td>
</tr>
<tr>
<td>Collision</td>
<td>14</td>
<td>6</td>
</tr>
<tr>
<td>Caught Fire</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>Capsized</td>
<td>38</td>
<td>32</td>
</tr>
<tr>
<td>Sunk</td>
<td>95</td>
<td>61</td>
</tr>
<tr>
<td>Vessel Missing</td>
<td>58</td>
<td>52</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>278</strong></td>
<td><strong>207</strong></td>
</tr>
</tbody>
</table>

**SEARCH AND RESCUE ACTIVITIES**

<table>
<thead>
<tr>
<th></th>
<th>1989</th>
<th>1988</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Persons Rescued</td>
<td>1,307</td>
<td>1,647</td>
</tr>
<tr>
<td>No. of Persons Missing</td>
<td>454</td>
<td>579</td>
</tr>
<tr>
<td>No. of Persons Recovered</td>
<td>75</td>
<td>276</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,836</strong></td>
<td><strong>2,502</strong></td>
</tr>
</tbody>
</table>

*Source: Philippine Coast Guard*
Following is a reproduction of some reported marine cases in Philippine waters or involving Philippine fleets (which were noted as some of the worst sea disaster in the world history), taken from Modern Shipping Disasters (1963-1987), by Hooke.

ALOHA. motor general cargo vessel; Cotabato Shipping Corporation; 494.

While en route from Cotabato to Iloilo carrying over 330 passengers and a general cargo, as well as 11-man crew, the Philippine inter-island motor vessel Aloha caught fire and sank off Zamboanga, south-western Mindanao Island, on June 2, 1974. With a total of 311 passengers and crew reported to have been rescued, the death toll was put at 33 but, as is the case of most Philippine shipping disasters, the exact number of lives lost will never be known because the total number of passengers actually being carried at the time could not be determined afterwards.

ANGELINA STAR. motor general cargo vessel; Philippine Star Forwarders, Inc.; 1962; Fukushima Zosenho, Matsue; 933; 65.69x9.86x5.01 metres.

The Philippine motor vessel Angelina Star was last reported when she sailed from Keelung at 9 a.m. on December 11, 1979, bound for Manila, loaded with a general cargo that included copper wire. However, during the morning of December 15, the motor container vessel Asia Ace and the motor vessel Loch Maree reported sighting an uninflatt-
ed 25-man liferaft with the name "Angelina Star" on it, plus a lifejacket and a body that was subsequently identified as being that of the 2nd engineer of the vessel. General wreckage, hatchboards and assorted debris was also located in the same area, lat.23 10’N, long.119 53’E. off the west coast of Taiwan. A search was instigated by the Taiwan Air Force but no trace of the vessel was found. She was presumed to have sunk with the loss of all hands. Fishing vessels subsequently reported sighting several decomposed bodies in the area where the Angelina Star was believed to have been lost.

ATLANTIC. motor general cargo vessel; Aligben Lines, Inc; 641.

While en route from Toledo, Cebu Island, to Surigao City, loaded with gypsum/fertilizer in bulk, the Philippine inter-island motor vessel Atlantic sank off Masapelid Island in lat.09 40’N, long.125 40’E, on September 2, 1984 due to the severe weather conditions created by typhoon "Ike". There were only five survivors.

DON CARLOS. motor general cargo vessel; Sulpicio Lines, Inc; 1944; USA; 707; 66.91x9.50x4.70 metres.

The 33-year old Philippine motor vessel Don Carlos sank off Gango, near Ozamis City, on July 29, 1977.
DON CARLOS GOTHONG. motor general cargo vessel; Carlos A. Gothong Lines, Inc; 1949; Burmeister & Wain, Copenhagen; 2,918; 94.67x14.05x9.02 metres.

The 29-year old Philippine motor vessel Don Carlos Gothong was declared a constructive total loss after she capsized and sank in Cebu harbour on October 12, 1978.

DON ERVIN. motor general cargo vessel; Lorenzo Shipping Corporation; 1955; Namura Shipbuilding Co., Ltd., Osaka; 1,038; 64.52x10.04x5.52 metres.

While en route from Manila to Ozamis City, Mindanao Island, loaded with a general cargo, the Philippine inter-island motor vessel Don Ervin listed and sank 1¼ miles south of Corcuera Light, Simara Island, on July 25, 1980, due to the severe weather conditions and rough seas created by typhoon "Kim". All on board safely abandoned ship and managed to reach Tacasan, Corcuera, Simara Island, on board the vessel’s motor launch and inflatable liferaft.

DON FRANCISCO. motor general cargo vessel; Lorenzo Shipping Corporation; 1944; J.K. Welding Co., Inc., Yonkers; 683; 50.69x9.78 metres.

While en route from Manila to Davao, loaded with a general cargo, the Philippine inter-island motor vessel Don Francisco ran aground off Banton Island on April 21, 1978, during typhoon "Olive". With her cargo hold and engine-room completely flooded, the wrecked vessel was abandoned as a constructive total loss.
According to local Press reports, over 1,000 persons died when the Philippine inter-island motor ferry Don Juan sank in the Tablas Strait off Mindoro Island in lat. 12° 50' 54"N, long. 121° 54' 02"E. at 10:30 p.m. on April 22, 1980, only 15 minutes after a collision with the Philippine motor tank barge Tacloban City. This tragic loss of life not only made the Don Juan the worst maritime disaster of 1980 but also one of the worst of all time.

The Don Juan was en route from Manila to Bacolod, Negros Island, carrying 890 officially listed passengers and 110 crew members, a total of exactly 1,000, while the Tacloban City, on which there was no loss of life, was en route to Bataan, in ballast, at the time of the disaster, which occurred in calm seas and under a bright moon off Maestre de Campo Island. About 500 survivors were reported to have been rescued by the motor tanker Laoag City, which took them to Batangas, while many others were picked up by the Tacloban City, which then also proceeded to Batangas. Numerous vessels and aircraft searched the area for survivors during the following day but the vast majority had already been picked up during the hours of darkness, with several of the survivors reportedly in a serious condition.

As appears to be the case in so many Philippine passenger-carrying vessels, the exact number of persons on
board will never be known but the owners of the Don Juan stated that 896 persons were eventually rescued, while 121 bodies were reported to have been recovered. The owners admitted that latecomers and many small children may well not have been included in the official list of passengers.

The master of the Don Juan filed an official protest, stating that his vessel had twice changed course in an effort to avoid a collision. He added that the tanker had also changed course, with the result that the tanker's bow struck the ferry. The master of the Tacloban City, cross-filing, stated that it was the ferry that was to blame, accusing her crew of negligence, lack of foresight and reckless manoeuvring. He said that it had been the ferry which had struck his tanker's starboard bow.

The scene of this disaster was less than 40 miles from the site of the world's worst-ever peacetime maritime tragedy, which involved the loss of another Philippine passenger-carrying inter-island vessel, the Dona Paz, in December, 1987, as a result of which a horrifying total of 4,386 lives were officially recorded as being lost. The strait between Marinduque Island and Mindoro Island is the busiest sea-land in the Philippines, with all inter-island vessels bound to or from Manila to the Visayas Islands and Mindoro having to pass that way. There was also another similarity in both cases with regard to the number of lives reported, at first, to have been lost. With the vast majority of those subsequently reported to have been on board the Dona Paz not listed on official passenger
lists, her original death toll was put at over 1,500 with the possibility that it could, in fact, have been over 2,000. However, when relatives of those on Board notified officials of the fact, the final death toll from the Dona Paz was put at 4,375, with another 11 crewmen being lost from the colliding vessel, the motor tanker Vector.

DON VICTORIANO I.  motor general cargo vessel;  Sulpicio Lines, Inc.; 1944; 769.

The 38-year-old Philippine motor vessel Don Victoriano I was on an inter-island voyage from Davao to Butuan, carrying a general cargo, when she ran aground off Sanco Point, east coast of Mindanao Island, on April 4-5, 1982. When she began to break up, she was abandoned by the salvors as a total loss.

DONA CASSANDRA.  motor passenger/general cargo vessel; Carlos A. Go Thong Lines; 1967; Hashihama Zosen, Imabari; 487; 53.80x11.00x3.79 metres.

At least 168 persons died when the Philippine inter-island motor passenger/cargo vessel Dona Cassandra capsized and sank in Nasipit Bay off the north-eastern tip of Mindoro Island on November 21, 1983, during the extremely severe weather conditions created by typhoon "Orchid".

The Dona Cassandra, which had sailed from Butuan City in Mindoro, for the 14-hour journey to Cebu City, was carrying a manifested 348 passengers and 48 crew as well as a cargo of lumber which had shifted in stormy seas. A total
of 219 survivors were picked up from the many small islands in the area as well as from lifeboats but, as with many Philippine shipping disasters, the true number of persons actually on board at the time will never be known.

DONA CONCHITA. motor general cargo vessel; Carlos A. Go Thong & Co.; 1944; 683.

The Philippine motor vessel Dona Conchita was en route from Butuan to Manila laden with plywood and a general cargo when she ran aground off Fortune Island in the vicinity of Nasugbu, Batangas, on August 1, 1972. All the crew and passengers on board were safely rescued from the wrecked vessel, which subsequently broke in two.

DONA JOSEFINA. roll-on, roll-off motor ferry; Carlos A. Go Thong Lines, Inc.; 1968; Mitsubishi Heavy Industries, Ltd., Shimonoseki; 991; 71.56 x 13.01 x 4.81 metres.

A total of 194 lives were lost when the Philippine inter-island roll-on, roll-off motor ferry Dona Josefina sank in the Visayan Sea off Sacay Point, Leyte Island, at about 4 a.m. on April 24, 1986, after listing and taking on water. She was on voyage from Cebu to Manila at the time and had only just sailed from the port of Isabel, Leyte, where she had loaded 679 tonnes of copper cathodes. Of the 364 passengers and 50 crew on board, only 220 were rescued.

In any "normal" year, this would probably have been the greatest maritime tragedy in terms of loss of life but
1986 was far from being normal. Just over four months later, on August 31, 423 Soviet citizens died when the Russian passenger vessel Admiral Nakhimov sank following a collision when on a Black Sea cruise.

**DONA PAZ.** motor ferry/general cargo vessel; Sulpicio Lines, Inc.; 1963; Onomichi Zosen K.K., Onomichi; 2,324; 93.10x13.64x8.06 metres.

The world’s worst-ever maritime disaster occurred during the late evening of December 20, 1987, when the 2,324 tons gross Philippine inter-island motor ferry Dona Paz collided with the 629 tons gross Philippine coastal motor tanker Vector in the Sibuyan Sea, central Philippines. Both vessels immediately caught fire when a fireball flashed between them and then, when completely gutted, both subsequently sank, at a depth of 530 metres. A staggering total of 4,386 men, women and children lost their lives as a result of this catastrophe.

The Dona Paz, which was built at Onomichi, Japan, in 1963, began life as the Japanese-flag Himeyuri Maru. After trading in Japanese waters for some 12 years she was sold to Filipino interests in 1975, her name being changed to Don Sulpicio. It was under the name Don Sulpicio that, on June 5, 1979, she was gutted by a fire while en route from Manila to Cebu, while carrying over 1,100 passengers, 64 crew and a general cargo. The fire was reportedly caused by a lighted cigarette butt being carelessly thrown into the cargo hold some seven hours after departure from Manila. However, all 1,164 persons on board were rescued
without loss but the seriously damaged vessel, which was beached off the Batangas coast, was declared a constructive total loss due to the severity of the damage. The wreck was subsequently repurchased from the underwriters by her original owners, Sulpicio Lines, who decided to have the vessel repaired and refurbished for further use on the inter-island passenger trade. With the extensive repairs having duly been completed, the newly-renamed Dona Paz was returned to service.

It was while she was en route from Tacloban, Leyte Island, to Manila, with an intermediate stop at Catbalogan, Samar, carrying thousands of passengers, many of whom were due to visit relatives for the Christmas holiday period, that the Dona Paz was involved in the most catastrophic collision the world has ever known. This occurred at about 10 p.m. on December 20, 1987, when she was reportedly hit by the motor tanker Vector, in the Tablas Strait off Dumali Point, eastern coast of Mindoro Island, in what is the busiest sea-lane in the whole of the more than 7,000-island archipelago that makes up the Philippines. All inter-island ships bound for Manila from Visayan Islands of the central Philippines and the southern island of Mindanao, and vice versa, have to pass through this narrow 18-mile wide channel between Marinduque Island and Mindoro Island.

The Vector, which had a crew of 13, was proceeding from Batangas, south-western Luzon, to Masbate, central Philippines, carrying a cargo of 8,800 barrels of petroleum products. The impact of the collision started an im-
mediate blazing inferno on both vessels, with the fire being fed by the tanker’s highly inflammable cargo. Both vessels subsequently sank but it was the Dona Paz that was to go down in the annals of maritime history as the world’s worst-ever peace-time case of loss of life at sea. Only 24 of her passengers and none of her crew survived, while only two of the Vector’s 13-man crew escaped from the raging fire. At first, the figures for the actual number of passengers being carried on the Dona Paz was put at 1,495, with 58 crewmen also on board, but with constant revisions being made when relatives found that members of their family had been on the Dona Paz, unmanifested, the final passenger death toll was put at an almost unbelievable 4,317. Added to this figure was her complete 58-man crew, making a total of 4,375 deaths on the Dona Paz, and 11 dead crew of the Vector, giving a complete death toll amounting to a massive 4,386 persons, men, women and children. The authorities stated that there had only been 1,586 manifested passengers, with another 2,755 unmanifested being on board. One survivor estimated that there had been over 1,000 children on the vessel, all of whom perished in the inferno. Only 275 bodies were reported to have been recovered. Most of these were found washed ashore along the coastline of Oriental Mindoro, while a few were located on beaches in Batangas Province. It was assumed that the vast majority of the persons on both vessels would have been completely consumed by the intense heat, there being little, if any, trace of their cindered bodies.

As is common with many Philippine inter-island pas-
senger ships, names of people with complimentary tickets, children under four years of age who are given free pass-
age and those who actually buy tickets on board ship are not listed in the passenger manifests. Extra tickets were usually bought illegally on board ship at a cheaper rate, with the fares going into the pockets of the crew. This is what led to the confusion over the actual number of passengers on board, added to which the Dona Paz was only certified to carry 1,518 passengers. She was, without doubt, massively overloaded.

Survivors of the disaster said they were all looking forward to a happy Christmas in Manila with members of their families when, in what seemed to be an instant, they found their ship on fire. Samuel Carillo, one of the 26 picked up alive by a passing vessel and brought to Manila, said that he was walking to the canteen when he felt a violent jerk and heard an explosion. "I went up on deck and there were flames everywhere. I jumped overboard", he added. Another survivor, Paquito Osabel, 42, said that the vessel was so overcrowded that up to four people were sharing individual beds and hundreds of others were sitting on the floor of the three-deck ship, unable to find a seat. Osabel said that he was talking to his sister and three teenage nieces, all of whom were lost, when he heard an explosion. "I went to the window to see what had happened and I saw the sea in flames," he said. "I shouted to my family that there was a fire but the fire spread so rapidly that there were flames everywhere. People were screaming and jumping overboard. The smoke was terrible. We couldn't see each other. All I could see were the flames. I just jumped into the sea."
A 15-year-old survivor, who suffered severe burns to his face and arms, said he was asleep but woke up when he heard the noise and panic. "I jumped into the burning sea. There were no lights, no life vests and no orders were being given." He lost his mother and two sisters. Another survivor claimed that the cabinets containing the life vests were locked.

Severino Carreon, a bus conductor from Catbalogan, claimed that the Dona Paz was so "jammed" with passengers that he had to sleep on deck while three other members of his family managed to find a space three floors below. "I heard a very loud explosion. It woke me up and I saw the fire." Carreon, who was taking his relatives to spend Christmas in Manila with a brother of his, said that the oil tanker had ploughed directly into the mid-section of the Dona Paz before exploding, releasing the highly flammable petrol cargo over both vessels. "Then I jumped into the water and swam for some hours praying that a ship would save me.

However, another survivor, Salvador Bacsal, a fisherman from Eastern Samar, thought that it was the Dona Paz that had rammed the tanker, with both vessels bursting into flames upon impact and the sea becoming a raging inferno.

The 26 survivors were all picked up by another inter-island passenger vessel, the Don Claudio, which took them to Manila for medical treatment to their burns injuries. The master of the Don Claudio, Captain Melecio Barranco, said that he had seen a fire from a distance of about
eight miles and began steaming towards the scene. "We saw big flames as high as a 10-storey building and lots of black smoke, just like a building being on fire", Captain Barranco said. "We arrived at 10:30 p.m. and made sure that it was a ship on fire. We also guessed that there was a tanker involved because the water smelled of oil." He added that the Dona Paz burned until shortly after midnight before sinking, while the Vector went down two hours later. The crew of the Don Claudio scanned the darkened waters for some three and a half hours before they gave up hope of finding any more persons alive. United States Air Force helicopters that subsequently went to the scene found no survivors, nor any signs of debris. "It was as if it had never happened", a US Air Force spokesman said.

Because the Dona Paz had no radio and therefore no distress messages could be sent from her, maritime officials acknowledged that they did not learn of the collision until over eight hours after it had occurred and it then took another eight hours to organize search and rescue operations because it had taken that amount of time to obtain enough information on the incident and to which area to send the first two search helicopters. Even then, they returned without any sighting at all "and", said the the director of the Manila Rescue Coordination Centre, whose office did not learn that the two vessels had collided and sank until 7 a.m. on Monday, nine hours later, "probably we were given the wrong coordinates". The authorities blamed poor communications, geography, lack of organization, shortage of trained personnel, inefficiency, lack of finances, and a host of other reasons for what was
described as "the frequent foul-ups" that occur in Philippine maritime operations.

Senior Coast Guard officials were subsequently dismissed with the possible threat of a court martial following the disaster. Coast Guard commanders in four districts were replaced and 16 other officers were reassigned after a board of inquiry found negligence within the Coast Guard Organization had been a contributory factor to the tragedy. The detailed Coast Guard inquiry findings were not made public but their action was taken as a tacit admission that the ferry was badly overcrowded, having been allowed to sail in such a condition being a violation of the statutory procedures for granting departure clearances to ferries.

Shipping officials representing the owners of both the Dona Paz and the Vector blamed each other for the tragedy. Captain Plutarco Bawagan, vice-president of Sulpicio Lines, told a five-man inquiry panel that he was convinced that the Vector had rammed his vessel. He claimed that the Dona Paz had a special bulkhead to keep her afloat if she hit another ship but he thought that the ferry had been hit amidships, as reported by some survivors. But Mr. Jose Sison, an attorney representing Vector Shipping Corporation, argued that the Vector had an even bigger collision bulkhead, as is normal for a tanker, as well as other equipment to cushion any impact. He maintained that the tanker was only travelling at 5.5 knots and if that vessel had rammed the Dona Paz, there would have been no explosion.
The owners of the Dona Paz subsequently increased insurance claims payments from pesos 20,000 to pesos 30,000 per life lost. In pounds sterling terms, this equated to about 822 per person. However, they still maintained that their vessel was not at fault, the tanker having to take the full blame for the catastrophe. Indeed in November, 1988, a Philippine marine inquiry issued a report stating that the Vector had been responsible for the collision, calling the tanker a "floating hazard to navigation".

The scene of the disaster was less than 40 miles from where the Philippines' previous worst maritime catastrophe had occurred on April 22, 1980, when over 1,000 lives were lost as a result of an almost identical collision involving the motor passenger ferry Don Juan and the oil tanker Tacloban City.

There is hardly a year goes by without a maritime tragedy occurring in the Philippines but Feliciana G. Salonga, president of the Philippine Shipyard and Engineering Corporation, stated in April, 1988, that the annual death toll at sea in the Philippines was an incredible 40,000. However, other Philippine authorities said that this was too high and put it nearer 20,000 to 30,000 (in one year!). Apparently such losses are rarely reported because they are an aggregation of, mostly, small events. During 1987, the statistics for those passengers listed on manifests alone as having travelled on local ferries was put at 11 million.
This extremely high number of deaths at sea is mainly because of the Philippines being a 7,000-island nation, of which 680 are inhabited, with a population of approximately 50 million. Literally hundreds of lives are lost every week from small accidents and "man overboard" situations. Among the more serious shipping accidents during 1987 were the loss of at least 51 passengers from a total of 188 when a motor launch sank off Siquijor on July 18, another 25 lives being lost when a motor banca struck a bridge in Pagalungan, Maguindanao on July 5, a further 70 being lost when another banca capsized off Buenavista, Bohol, on January 17, with at least 25 persons drowning when a motor launch capsized off Sibutu, Tawi-Tawi, on January 16. Only the previous year, the motor ferry Dona Josefina had sunk with the loss of 194 lives in the Camotes Sea off Isabel, Leyte, on April 25, 1986, while, as mentioned above, over 1,000 men, women and children died when the Don Juan sank following a collision with the Tacloban City in April, 1980. Loss of life at sea is apparently a way of life in the Philippines.

The Filipino fleet includes about 100 passenger-cargo ships more than 250 tons gross, such as the Dona Paz, 200 or so ferries of less than 250 tons plus thousands more barges and small vessels plying short routes. Many are considered to be "antiquated". Mr. Salonga acknowledged that the appalling disregard for safety in his country and the unseaworthiness of many vessels was something that had been talked about for years but, until the Dona Paz catastrophe, no one had seemed to want to do anything about the problem. He added that there were simply not enough ser-
vices, with passengers being so desperate to get on board the inter-island ferries that the last thing on their minds was safety and whether a vessel was overloaded.
Chapter II

MARINE CASUALTY INVESTIGATION SYSTEM IN THE PHILIPPINE

This Chapter will discuss fully the present marine casualty investigation system in the Philippines. The structural as well as the procedural frameworks thereof shall be pointed out and explained in detail. As a result, one can easily determine whether the existing system is already appropriate and adequate or whether it needs to be re-structured.

Marine casualty investigations in the Philippines are carried out by two government offices, i.e., the Maritime Industry Authority and the Philippine Coast Guard.

Maritime Industry Authority (MARINA)

MARINA was created on 1 June 1974 by virtue of Presidential Decree 474, originally placed under the Office of the President, then later and up to now has been attached to the Department of Transportation and Communications (DOTC) for policy and program coordination. It was tasked to integrate the development, promotion and regulation of the maritime industry in the country. With the issuance of Executive Order 1011 (which abolished the Board of Transportation and transferred to MARINA the former's quasi-judicial functions pertaining to water transportation) and Executive Orders 125 and 125-A (which reorganized
the DOTC), MARINA's regulatory responsibility to the industry thereby increased.

For all intents and purposes, MARINA is the duly-constituted Maritime Administration in the country. In the carrying out of its functions within administration, MARINA is mandated to adopt economic, legal and administrative measures to influence the position of the Philippine fleet and its ancillary industries at the national level and in the international market.

In order to attain its objectives, MARINA is asked:

1. To adopt and implement a practicable and coordinated Maritime Industry Development Program which will include, among others, the early replacement of obsolescent and uneconomic vessels; modernization and expansion of the Philippine merchant fleet; enhancement of domestic capability for shipbuilding, repair and maintenance; and the development of a reservoir of trained manpower.

2. To provide and help provide the necessary

(2.1) financial assistance to the industry through public and private financing institutions and instruments;

(2.2) technological assistance; and

(2.3) in general, a favorable climate for expans-
ion of domestic and foreign investments in shipping enterprises.

3. To provide for the effective supervision, regulation and rationalization of the organizational management, ownership and operations of all water transport utilities and other maritime enterprises.

1. Organizational Structure.

MARINA is governed by a Board, known as the Maritime Industry Board, and the Management.

The Board is composed of the Secretary of Transportation and Communications; the Secretary of Trade and Industry; the Secretary of National Defense; the General Manager of the Philippine Ports Authority; the Chairman of the Development Bank of the Philippines; and the MARINA Administrator. It is responsible for providing comprehensive policy guidelines for the development and regulations of the national shipping industry. As such, the main tasks consist of the promulgation and prescription of developmental rules and regulations, standards, procedures and recommendations for laws and measures towards the growth and effective administration of maritime affairs.

On the other hand, the Management of the Authority is vested in the Administrator, duly assisted by the Deputy Administrator for Planning and the Deputy Adminis-
Organizational Chart of the Maritime Industry Authority

Legend:

Not Yet Operational
As Of Calendar Year 1990
trator for Operations. They directly control and supervise the operation of the Authority's eleven (11) line and staff offices and six (6) regional offices, all headed by Directors. (Illustration 1)

The delineated services of the line and staff and regional offices are defined, as follows:

**Domestic Shipping Office** - Formulates, recommends and implements policies and guidelines relative to the economic supervision and regulation of the domestic shipping sector to continually improve and stimulate development of the industry.

**Overseas Shipping Office** - Formulates, recommends and implements policies, guidelines and criteria pertaining to the economic regulation of overseas shipping operations to enhance the country's competitive position in the carriage of foreign trade and cross trade.

**Manpower Development Office** - Establishes, develops and implements an effective manpower development system to support the current and future needs of the shipping and shipbuilding industries.

**Registration and Licensing Office** - Formulates, recommends and implements the adoption of rules and regulations, procedures and guidelines relating to the registration and documentation of all vessels owned/chartered by Philippine nationals, including the issuance of certificates incident to such registration and documentation;
formulates, recommends and implements policies and programs for the regulation and supervision of shipbuilding, shiprepair and shipbreaking.

**Enforcement Office** - Enforces laws, rules and regulations, including penalties for violations affecting water transportation services through an effective monitoring system and stringent survey/inspection program.

**Technical Services Office** - Undertakes technical evaluation of all shipping projects and research for the modernization of the Philippine fleet and development of the maritime industry; conducts vessel inspection/surveys relative to safety and quality of shipping services.

**Franchising Staff** - Hears applications for CPC, vessel re-routing, petitions for rate increase/route allocation in the exercise of quasi-judicial functions over all public water transportation services; performs all other functions of the defunct Board of Transportation (BOT) over water transportation service under the Public Service Act.

**Maritime Legal Affairs Office** - Provides legal advice and assistance to the Board and the various units of the Authority in the interpretation of laws and implementation of rules and regulations, prosecutes violations of maritime and water transportation laws, represents the Authority in all quasi-judicial cases and reviews the Board’s Agenda.
Planning and Policy Staff - Formulates, recommends and continually evaluates and analyzes the broad policies and guidelines, plans and programs of MARINA for the promotion and development of the maritime industry in coordination with the appropriate units, concerned government agencies and the private sector; reviews, evaluates, coordinates and monitors projects developed and undertaken by the various units of the Authority.

Management Services Staff - Formulates, develops and maintains information systems to support the promotion, development, regulation and supervision activities of the Authority and monitoring systems in the implementation of plans, programs, policies and guidelines; reviews and improves, if necessary, existing management systems and procedures to achieve maximum efficiency in the Authority’s operations.

Administrative and Finance Office - Plans, directs and supervises the general management and support service for all MARINA units; and formulates, develops and implements administrative programs and activities related to budgetary and accounting services, human resource development and office administration.

Regional Offices - Implements MARINA programs in the Region; performs delegated functions with respect to issuance of Provisional Authority (PA) to uncontested original applications for CPC and issuance of Special Permits (SP) under Sec.12 (D) of PD 474. The six regional offices are located in the cities of Cebu, Zamboanga, Iloilo, Cagayan de Oro, Batangas and Davao.
2. Scope and Coverage.

The regulatory and developmental functions of MARINA encompass the broadest concept of the maritime industry, that is, the subjects of such exercises are those enterprises engaged in the business of designing, constructing, manufacturing, acquiring, operating, supplying, repairing and/or maintaining vessels. These include persons operating and/or managing shipping lines, stevedoring, arrastre and customs brokerage services, shipyards, drydocks, marine railways, marine repair shops, freight forwarding and the like.

As regards vessels or watercrafts, specific conditions must be met in order to fall within the purview of MARINA. Such crafts must be motorized and weigh over three gross tons and are classified as barges, lighter, bulk carrier, passenger ship, freighter, tanker, etc.

MARINA’s coverage is limited to purely commercial maritime operations. It follows that other ventures although marine-related are exempted from MARINA regulations, e.g. the vessels and enterprises owned and operated by the Armed Forces of the Philippines and by foreign governments for purely military and strategic purposes, such as defense and deterrence; pleasure craft, yachts and sailboats; and fishing vessels which are non-motorized and below three gross tons.
3. Jurisdiction.

Section 4 of Presidential Decree 474 specifically provides that MARINA shall have general jurisdiction and control over all persons, corporations, firms and entities in the maritime industry of the Philippines, the derived benefits of which accrue to Filipino nationals or, in the case of corporations, to the majority of Filipino stockholders. Sole proprietors of maritime enterprises must be Filipino citizens; sixty percent of the outstanding capital stock of corporations with vote entitlements must be owned by Filipino nationals; or, in the case of joint ventures, at least sixty percent of the members of the governing board of both corporations must be Filipino nationals.

4. Activities.

The main basis for the regulation and control of ships engaged in the Philippine commercial trade is the issuance by MARINA of the certificate of public convenience (CPC). In effect, the CPC constitutes the license for the vessel to finally sail at sea. It is the permit to conduct commercial carriage of goods, raw materials, products, and people. The CPC is granted on the feasibility and validity of statutory documents presented by the shipowner.

The CPC extends legal rights to the shipowner to field his vessel(s) on the specific routes applied for. It contains the conditions within which a vessel carries
on the passenger and cargo trade. Specific time sche-
dules, departure and arrivals, passenger and cargo rates
are spelled out. The validity of the certificate, usually
in multiples of two, five, ten, and fifteen years, depends
upon the make, age and general condition of the ship. The
obligation of the shipowner lies in the provision of
amenities on board for safety, comfort and well-being of
passengers and cargoes. Reports to MARINA consist of the
submission of annual financial records, together with the
payments of supervision fees.

On the other hand, in the Philippine context, the
Certificate of Philippine Registry (CPR) issued by the
Philippine Coast Guard (PCG), which will be discussed
later under a different heading, is merely to satisfy
that obligation as to grant of nationality and flag to
a vessel and provide proof of the link between the state
and the ship. It is not by itself a permit to travel.

The other activities within the competence of MARINA
are pertinently provided for in Executive Order 125, as
follows:

- Assistance to various officers, professionals,
technicians, skilled workers, and seamen such
that they are gainfully employed in the domestic
shipping, shipbuilding/ship repair enterprise;

- Promotion of working conditions and terms of
employment of officers and crew of Philippine
Registered Vessels, including those employed on
land-based marine ventures;

- Investigation by itself or with other government agencies of all matters within its jurisdiction, except marine casualties or accidents which shall be undertaken by the Philippine Coast Guard.

- Approve the sale, lease, or transfer the management of vessels owned by Philippine nationals to foreign owned or controlled enterprises;

- Prescribe and enforce rules and regulations for the prevention of marine pollution in Philippine waters in coordination with the government authorities concerned;

- Recommend/approve of such measures necessary for the regulation of the importation and exportation of vessels, their equipment and spare parts;

- Inspection and evaluation of training standards, facilities and performance of maritime educational programs of state and private schools; and

- Conduct of pre-employment, on-the-job or upgrading of professional skills for seamen and on shore support facilities to the maritime industries.
Marine casualty investigation as an inherent function of MARINA was vested upon it on 20 March 1985 when the President of the Philippines signed Executive Order 1011, which transferred the quasi-judicial functions of the defunct Board of Transportation pertaining to water transportation to MARINA. The executive proclamation empowered MARINA through its Board of Directors or any person(s) duly authorized by the board to perform the following functions:

- 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 interisland 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;

- 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 para-
graphs shall not apply;

-to determine, fix and approve, periodically re-
view and adjust, reasonable passenger fares,
freight rates and other related charges, rela-
tive to the operation of domestic public water
transportation services engaged in liner ship-
ning;

-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;

-to punish for contempt of the Authority, both
directly and indirectly, in accordance with the
pertinent provisions of, and the penalties pres-
ccribed by the Rules of Court;

-to issue subpoena and subpoena duces tecum and
to summon witnesses to appear in any proceed-
ings of the Authority to administer oaths and
affirmations, and in appropriate cases, to order
the search and seizure of all vessels and docu-
ments, as may be necessary for the proper dispo-
sition of the cases before it; and

-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.

It is apparent that the subject of investigation is the certificate of public convenience (CPC) issued by MARINA and the violations of the provisions thereof. The bases of the investigation are complaints from aggrieved parties or at the instance of MARINA itself which acts as complainant in the following cases:

- Overcharging or undercutting of tariff rates for unfair economic gain or advantage over competitors;

- Digression from approved trade routes;

- Non-observance of authorized passenger/cargo capacity resulting in overloading and/or overcrowding of the vessel;

- Unjustified violations of time schedules for departures and arrivals;

- Violations of the economic regulations as regards ownership, capitalization, citizenship of owners, non-payment of statutory fees, etc;

- Absence of necessary equipment for safe navigation, emergency procedures and life saving paraphernalia in cases of accidents;

- Absence or lack of valid certificates for ships'
-Conditions relating to the unseaworthiness of the vessel.

It is, therefore, only when there are apparent grounds indicative of CPC violations that MARINA intervenes and initiates action against responsible persons in a marine casualty investigation.

As an additional input, it is worthwhile mentioning that President Corazon C. Aquino signed Executive Orders 125 and 125-A on 30 January 1987 and 13 April 1987, respectively. The main provisions of these laws consist in the transfer of additional functions from the PCG to MARINA and are listed as follows:

- to register vessels as well as issue certificates, licenses or documents necessary or incidental thereto;

- to undertake the safety regulatory functions pertaining to vessel construction and operation including the determination of manning levels;

- to enforce laws, prescribe and implement rules and regulations, including penalties for violations thereof, governing water transportation and the Philippine merchant marine, with the aid of other law enforcement agencies;
-to undertake the issuance of licenses to qualified seamen and harbor, bay and river pilots; and

-to issue and register the continuous discharge book of Filipino seamen.

The above functions were inherent to the Philippine Coast Guard which before the issuance of the cited directives was discharging the legitimate role of the maritime safety administration and, equally up to this time, MARINA has been involved more on the commercial aspects of the shipping cycle.

In the pursuit of these directives and in view of the expanded responsibilities transferred to MARINA, this agency undertook a major re-organization in terms of new offices, divisions, additional personnel and, of course, a higher budget in order to enable itself to address the new tasks.

The complete re-organization of MARINA was effected in 1988 and 1989 but unfortunately the proposed budget was never approved. During these times, drastic cuts in government expenditures were strictly enforced due to double-digit-inflation, an irrational balance of payments and the national obligation of foreign debt servicing. Here was a situation where MARINA had evolved a maritime safety administration infrastructure but, with such few resources to prop up the new commitments.
Questions as to whether MARINA had enough technical expertise to confidently assume the newly created activities also came into the picture. There were also doubts on the capability of the agency to provide a comprehensive interisland network (vis-a-vis that of the PCG) to monitor shipping operations, conduct periodic inspections/surveys and apprehend violators.

It is perhaps for these collective reasons that the MARINA Administrator has decided to defer the assumption of the new mandated functions until such time that it can considerably and confidently accept and discharge them. Of course, the larger part of the private shipping sector has decried such a move. For quite a long period, they have lobbied for the consolidation of maritime regulations and transactions under one agency for obvious reasons. Foremost among these was the immense bureaucratic red tape involved. Two or even more agencies responsible for a single line of enterprise will no doubt produce overlaps, multiplicity of documents, diversity of concentration and service philosophies which will certainly occur when the right hand has no idea what the left hand is doing.

Since the issue on the validity of the accusations are still debatable or unresolved, and the agencies concerned continue to each discharge their respective functions prior to Executive Orders 125 and 125-A, this writer will dwell on the status quo, i.e. limiting consideration to the premise that MARINA is the Maritime Administration and the PCG is the Maritime Safety Administration.
5. Procedure of Investigation.

As mentioned earlier, the impetus for action by MARINA is initiated by a complaint or complaints from parties who have suffered physical injuries, material or emotional (for claimants of survivors), losses due to lack of due diligence of the shipowner or his authorized agents. Even in the absence of complaints from outside parties, MARINA may motu proprio act as the complainant when the subject-holder of a CPC rightfully deserves to be penalized or disciplined in the public interest for violation(s) of the terms and conditions of the CPC.

All complaints are substantiated by an official report of a MARINA inspector/surveyor. The Legal Department of MARINA is the appropriate unit that accepts and files the official complaint. A complaint is deemed sufficient if it contains the name of the complainant or the offended party, the name of the respondent, a reference to the provisions violated whenever practicable, the acts or omissions complained of as constituting the offense, and the date, hour and place of the commission of the offense.

When the Legal Department has satisfied itself as to the sufficiency of the complaint, especially when the inspectors/surveyors have given substance to the complaint through corroboration or confirmation, a summons is forwarded to the respondent together with a copy of the complaint, ordering the latter to answer within five days from receipt thereof and to appear and produce evidence on the date and hour specified in the notice.
However, in cases where the operator/shipowner is the subject of the complaint and is reported to have caused or may continue to cause death, physical injuries, defrauda-
tion of public utility users or other serious harm to public interest, a more urgent or shorter proceeding is resorted to. The alternative course in these cases is then called summary proceedings in which MARINA orders the respondent to appear before the Hearing Officer within seventy-two hours from his receipt of the Order and show cause why his CPC should not be cancelled or suspend-
ed for reasons stated in the complaint or surveyor’s/inspector’s report.

When the subject of the complaint appears before the duly authorized Hearing Officer, he may do so in person or through an attorney/counsel of his choice provided such attorney/counsel has first served a written notice of appearance on behalf of the respondent.

Further activities after this condition are those normally followed in regular courts such as the presenta-
tion of evidence, examination and cross-examination of witnesses, etc., all leading to an order, ruling, decision or resolution of the case to be promulgated by the Hearing Officer or the Board of Directors sitting en banc.
The Philippine Coast Guard, which was established by Republic Act 5173, is a military entity under the direct operational control of the Philippine Navy, a branch of the Armed Forces, Department of National Defense. It stands as the de facto Maritime Safety Administration in the Philippines.

The enabling act of the PCG Charter specifies that its main functions are "to enforce all applicable laws, promulgate and administer regulations in order to promote the safety of life and property at sea and to enhance the naval defense of the country."

1. Organizational Structure.

The PCG is headed by the Commandant who is assisted by the Deputy Commandant and a Chief of Staff.

The divisions under their supervision which exercise maritime safety administration functions are as follows:

CG 8 - assists the Commandant in the formulation of policies, rules and guidelines for the documentation, registration, inspection, and operation of merchant vessels for the promotion of safety of life and property at sea.

CG 9 - assists the Commandant in promoting marine environmental protection through pollution control and
abatement and the enforcement of the state fishery laws.

CG 10 - is responsible for the operation, maintenance and improvement of navigational aids, thereby enhancing the safety of navigation in Philippine waters.

CG 11 - is in-charge of the administration and regulation of merchant marine personnel as regards training, registration and the conduct of emergency readiness drills.

Board of Marine Inquiry (BMI) - conducts formal investigation into the cause(s) of marine accidents in order to prevent similar occurrences in the future.

Seaman’s Registration and Processing Unit (SPRU) - is responsible for the registration of seamen, monitoring of their on-board-conduct through their control over the Seaman’s Continuous Discharge Book.

District Offices - are eight field offices acting as extensions of central PCG Command. (Illustration 2)

2. Scope and Coverage.

The subjects of PCG activities include all motorized, waterborne crafts engaged in commercial ventures. In contrast to MARINA, the PCG is responsible as well for the registration of fishing vessels, whether artisanal or for subsistence use, and also pleasure yachts and other private motorized crafts. This activity emerges more from
the military (and defense) orientation of PCG in relation to the combat of smuggling, piracy and illegal fishing operations.

Significantly, the PCG has existing memoranda of understanding with other government agencies. By reason of its widespread network and availability of waterborne craft, the PCG has become the marine enforcement arm of agencies such as:

**MARINA** - for ensuring that the conditions of the certificates of public convenience are observed, i.e. as to vessel routes, fares, arrivals and departures, passenger safety and convenience.

**Bureau of Customs** - for the apprehension of smugglers and seizure of smuggled goods and curtailment of other illegal activities particularly meant to defraud the government of tax duties.

**Bureau of Fisheries** - for the control and prevention of illegal fishing activities.

**Professional Regulations Commission** - for the assurance that only duly licensed marine officers and certificated crew serve on board merchant marine vessels.

**Commission on Immigration and Deportation** - for the monitoring and apprehension of vessels engaged in the carriage of illegal aliens.

**Philippine Ports Authority** - for cooperation in their
objectives in line with port security and vessel traffic.

Bureau of Plant and Animal Industry - for the control and apprehension of undocumented plant, timber and all livestock transfers.

Central Bank of the Philippines - for the prevention of illegal transport of foreign exchange through seaborne crafts.

Postal Service Office - for the security of mail transport on waterborne crafts.

National Telecommunications Commission - for the control and supervision of maritime communications and equipment including frequency allocations.

3. Jurisdiction.

The Philippine Merchant Marine Rules and Regulations have defined the respective jurisdiction of each class of investigation body (the classes of which body shall be discussed in number 4 hereunder) by pertinently providing, as follows:

The Board of Marine Inquiry (BMI). - Shall have the jurisdiction to investigate marine accidents or casualties relative to the liability of shipowners and officers; exclusive jurisdiction to investigate cases/complaints against the marine officers; and, to review all proceedings or investigations conducted by the Special Boards of
Marine Inquiry.

The Special Board of Marine Inquiry. - Shall have original jurisdiction to investigate marine casualties and disasters which occur or are committed within the limits of the Coast Guard District concerned or those referred to by the Commandant.

The Hearing Officers. - Shall have jurisdiction to investigate violations of existing maritime laws and/or regulations committed within the limits of his Coast Guard District which the Philippine Coast Guard is empowered to enforce and for which the imposition of administrative fines are provided; cases or complaints against holders of seamen's certificates not otherwise licensed as marine officers shall also be cognizable by the Hearing Officers and may be filed before the Hearing Officer of the Coast Guard District where the respondent resides or where the complainant resides at the election of the complainant.

4. Activities.

The PCG is in-charge of surveillance and inspection of vessels entering and leaving the Philippine territorial waters. Inherent thereto is the prevention and suppression of all unlawful acts carried on at sea.

As regards vessel safety, the PCG approves plans for the construction, repair or alteration of vessels. In its task of issuing certificates of registry for purposes of
establishing vessel ownership, flag, identity, ship-hull integrity, the PCG on its own conducts inspection and survey of vessels. The end result of such surveys is the issuance of documents/certificates required nationally or internationally.

Navigational and safety aids are also within the purview of the PCG competence; hence, it enforces rules for vessel lights, signals, steering, sailing, passing, anchorage, towlines, bridge signals, etc., and near or on shore facilities such as harbour lights, lighthouses and buoys. Wrecks, floating or sunken, a danger to navigation are destroyed or towed in port. Fish traps that pose a threat to the sea lanes are dismantled. Permits for salvage and salvage operations are supervised by the PCG. Search and rescue operations are also instituted on the high seas and in waters subject to Philippine jurisdiction.

Pollution from ship discharge and sewage from coastwise industrial concerns are monitored and fines and penalties are imposed on violators.

In the development of maritime personnel, the PCG has the task of the supervision of maritime schools and training centers, in coordination with the Department of Education, Culture and Sports, as regards courses in navigation, seamanship and marine engineering programs. A seaman’s training center is being administered by CG 11 for the training and upgrading of seamen’s skills in firefighting, survival craft handling, first aid and radar
The manning levels of domestic and international flag carriers are also supervised by the PCG. In this context, crew nationalities are verified, emergency preparedness drills conducted and vessel safety equipment (lifeboats, rafts, jackets and their location and markings) inspected.

Examinations are conducted to qualify harbour pilots, major and minor patrons and other unlicensed merchant marine personnel for coastwise travel.

For national security purposes, the movement of strategic materials by all public and privately owned seaborne craft is supervised and controlled. The Coast Guard exercises exclusive jurisdiction over the seizure and arrest of vessels found in violation of laws. It is likewise clothed with authority to monitor and control travel and transport of known and unknown notorious enemies of the state and their transfer of logistics.

Relative to the liability of shipowners and ship officers, the PCG enforces the rules on their conduct in the occurrence of accidents which are investigated to ascertain the cause(s), establish liability and report to the proper authorities for appropriate action.

The Board of Marine Inquiry (BMI) of the PCG is the body designated by the Commandant which has jurisdiction to investigate marine casualties relative to the liability of shipowners and officers. It exercises exclusive juris-
duction over cases/complaints against marine officers.

There are three (3) classifications of Coast Guard Hearing Bodies:

The Board of Marine Inquiry (BMI) - is composed of five members appointed by the Secretary of National Defense upon recommendation of the Commandant. It is constituted by one PCG line officer of Captain’s rank as Chairman. The members are two master mariners and one chief engineer of the Philippine merchant marine and one member of the Philippine Bar.

The Special Board of Marine Inquiry (SBMI) - is created by the Commandant in areas covered by a Coast Guard District depending on the exigencies demanded by public interests as well as on the degree and extent of the incident/accident. It is composed of one PCG line officer as Chairman, one licensed master and one licensed chief engineer as members chosen from among qualified civilians or PCG personnel.

The Hearing Officer - is designated by the Commandant from among military officers and/or civilian employees of the Coast Guard, preferably the legal officer of the District or civilian Coast Guard lawyer.

The powers of the BMI, SBMI and Hearing Officer consist of the following:

- to go on board a ship and inspect the same or any
part thereof or any of the machinery, boats, equipment or articles not necessarily detaining or delaying her from proceeding on any voyage;

- to enter and inspect any premises for the sole purpose of creating a report thereof;

- to summon witnesses having knowledge on the subject matter to appear in the hearing and answer questions;

- to require and enforce the production of all books, papers or documents or any other evidence considered important for the purpose; and

- to administer oaths or, in lieu thereof, require any person to make and subscribe a declaration of the truth of his own statement(s).

5. Procedures of Investigation.

4.1 Any investigation may be initiated:

- by the Commandant at his own instance;

- through the sworn complaint of any person, if after the preliminary inquiry, a prima-facie case has been established;

- through the filing of an inspection/apprehension report by any unit of the Philippine Navy or the PCG; or
- at the instance of a marine protest.

4.2 In all investigations, the party-litigants are given the opportunity to present their case or defend themselves personally or through counsel, and to present all witnesses and evidence as they may desire. The investigating body, however, has the discretion to overrule unreasonable motions regarding presentations of evidence which are deemed irrelevant or dilatory.

4.3 Party-litigants and witnesses are issued/notifyed by a subpoena of the scheduled hearing within at least five days of the hearing. The notice specifies the day, date, time and place of the hearing.

4.4 The order of the hearing is as follows:

- the complainant or the PCG itself is first to introduce the evidence;

- the respondent or adverse party shall then present evidence in support of his defense; and

- when the presentation of evidence is concluded and the formal offer thereof has been made, the parties may be required to submit their respective memoranda within a reasonable time.

4.5 The order in which a witness may be examined is as follows:
- direct examination by the proponent,

- cross examination by the opponent,

- re-direct examination by the proponent,

- re-cross examination by the opponent.

4.6 Objections or interlocutory questions are recognized and resolved by the Chairman of the Board or Hearing Officer.

4.7 The proceedings are not bound by the strict rules of evidence but such rules of the court are followed by analogy for practicality and convenience.

4.8 The use of stenographers is optional except when the Chairman of the Board or Hearing Officer deems that the nature of the case requires the availability of one.

4.9 All documentary evidence and exhibits are marked by letters A, B, C, etc when introduced by the complainant and by numbers 1, 2, 3, etc when presented by the respondent.

4.10 If the complainant fails to appear at the time of the trial or fails to prosecute his case for a reasonable length of time, the action may be dismissed by either a motion of the defendant or the Chairman himself.

4.11 If the respondent fails or refuses to appear
by himself or through counsel after proof of service of the notice of hearing, he shall be declared in default.

4.12 If one party is declared in default or refuses to recognize the authority of the investigating body, such body may proceed with the hearing ex parte.

4.13 The order of default may be set aside on motion of that party by showing that his failure was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. The motion must be executed before a decision on the case is arrived at.

After due hearing, the records of the proceedings, findings and recommendations of the Board or Hearing Officer are submitted to the Commandant for approval. The decision of the Commandant may or may not be based on the findings/recommendations of the Board. His decision may take the form of reprimands to erring officers, suspension or revocation of marine certificates and/or declaring an administrative liability on the part of the shipowner/operator. Another alternative is his ordering a further investigation of the case.

Thus far, the author has discussed the quasi-judicial procedures resorted to in cases of marine accidents/incidents. There are cases, however, when the Commandant recommends the handling of such cases by the proper civil courts or when the government itself steps in and orders a formal investigation.
The Commandant recommends a public settlement/inquiry under the following conditions:

- when the casualty was accompanied by loss of life or property or involved in serious damage.

- if the casualty has given rise to a substantial amount of public attention or to a disturbance of public confidence.

- if it appears that national legislation must be applied to lessen or minimize the impact of such casualties.

Under the above conditions, the PCG relegates itself to the role of assisting the court in every possible manner and may include:

- recommending to the service of a competent counsel to represent the government,

- recommending the composition of a panel of assessors,

- producing the proceedings of the preliminary inquiry,

- arranging for the production and attendance of witnesses

- arranging for the court-visit to the scene of the incident.
Summary:

1. No specialized government body exists in the present marine casualty investigation system in the Philippines that investigate marine accidents in the true sense, i.e. for the advancement of safety of sea transport.

2. Although MARINA and PCG act whenever a sea accident occurs, neither of the two offices does the investigation for that stated purpose. While MARINA determines whether violations of the CPC provisions have been committed, the PCG determines the liabilities of shipowners and officers. Investigations by both are purely adversary-in-nature.

3. There is actually overlapping or duplication of functions between MARINA and PCG which receives much public objection and criticism.

4. The executive proclamations defining the investigative powers of MARINA and PCG are quite unclear. Diverging interpretations thereon add to the complications in the furtherance of the marine casualty investigation system.

5. MARINA and PCG are equally regulatory and enforcement offices in maritime affairs - thus, they have 'conflicts of interest' potentialities as investigators of sea incidents.

6. The MARINA and PCG investigations contain no safety recommendations from which appropriate standards could be derived.
7. The existing rules and regulations pertaining to safety are deemed either obsolete or mere fragmentations founded on imaginary or unrealistic ideas.

8. Only formal investigations on marine cases are undertaken because of the absence of express provisions, by law or otherwise, on the conduct of preliminary inquiries. Consequently, these investigations last so long.
Chapter III

ANALYSIS OF THE AMERICAN and CANADIAN SYSTEMS FOR MARINE CASUALTY INVESTIGATION

This chapter will present the salient features of the marine casualty investigation systems in the United States and Canada and discuss how these can practically influence and set an ideal basis for the formation of a more vital framework in the Philippine system, as one is admittedly wanted.

The American System

The United States of America has a dual system of marine casualty investigation; one is that being carried out by the United States Coast Guard; and the other, by the National Transport Safety Board.

1. General Overview. The USCG, which is under the control and supervision of the Department of Transportation, carries out maritime responsibilities ranging from vessel inspection and certification, licensing and certification of personnel, federal pilotage, vessel traffic management, regulations, and enforcement, for marine casualty investigation. Under the set up, the possibility of
conflict of interest is evidently strong because, with the USCG investigators being part of the inspection service and all Coast Guard activities being answerable to only one authority, the USCG acts as regulator, enforcer, and judge as well. In addition, in the investigation of marine accidents where Coast Guard vessels were involved (principally the USCG Cutter Blackthorn- SS Capricorn collision), the USCG was said to be investigating itself, even though the conduct of investigation was participated in by the NTSB. Hence, a Joint Memorandum of Understanding which shall be discussed below was correspondingly entered into by and between the USCG and NTSB, giving the latter the sole power to investigate accidents involving the CG vessels.

The Commandant who is in full charge of the USCG renders the decisions on major marine casualty investigations then carried on by senior investigating officers and investigators of field offices distributed among 11 districts. The District Marine Safety Offices, headed by District Commanders, have complete control over the investigative operations. (illustration 3)


2. Authority and Jurisdiction. The USCG is empowered to investigate marine incidents so identified under Chapter 61, Title 46, United States Code, which are those resulting in death, serious injury, material property
loss, or material damage affecting a vessel's seaworthiness. It has jurisdiction over:

(2.1) a marine casualty or other accident involving any vessel upon the navigable waters of the United States, or involving US vessels wherever they may be;

(2.2) an accident involving the destruction of, or damage to, any bridge or other structure or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters;

(2.3) an incident involving a major fire, an oil spill, or any injury occurring as a result of operations conducted pursuant to the Outer Continental Shelf Lands Act, as amended (OCSLA) including allegations of unsafe working conditions or violations of safety regulations;

(2.4) water pollution by oil or other hazardous substances or the threat thereof to the "waters of the United States" (anywhere in the hydrologic chair);

(2.5) acts of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any licensed, certificated, or documented individuals;
(2.6) boating accidents; and

(2.7) casualties or accidents which occur to any component of a deepwater port.

3. Purpose. Guided by Chapter 3 of its Marine Safety Manual, implementing Parts 4 & 5 of 46 Code of Federal Regulations, the USCG investigates marine casualties "to obtain factual information for the prevention of similar casualties, as far as practicable - which information will be available for program review and statistical studies, and for adoption of appropriate corrective measures, standards of safety, and legislation and regulations; and to determine whether there is any evidence of violation of law or regulation warranting institution of civil penalty action under any of the laws administered by the Coast Guard, or suspension or revocation proceedings under 46 United States Code 7703". Ergo, the USCG investigations do not only take into account the safety aspects but also the disciplinary and penalty aspects.

4. Investigation Procedure. The USCG requires the reporting of accidents on CG Form 2692 wherein the vessel owner/operator has to indicate data needed for documentation of the case, such as identity of vessel, personnel, etc, as well as, a description of what occurred and the best guess as to why/how it occurred. It is the job of the investigating officer to review such forms when they are sent in, to determine if the information provided is complete and accurate, to conduct preliminary interviews as necessary, and then to evaluate whether or not more de-
tailed investigation is necessary. If CG Form 2692 is found to be sufficient, the investigating officer merely endorses it to higher officials to indicate apparent cause of casualty; otherwise, the investigating officer may use a letter of transmittal to go with the form, or may write a full narrative report which includes findings of fact, conclusions, and recommendations. However, investigations of more complex cases are conducted in a formal setting (usually by either a one-man-board of inquiry or Marine Board of Investigation), with sworn testimonies taken in a public hearing and transcribed by a court reporter, participation by interested parties, etc. Decisions are rendered at the level of the District Commander or the Headquarters (particularly the Commandant), as the case may be, on the basis of the recommendations of the investigating officers.

**National Transport Safety Board (NTSB)**

1. General Overview. The NTSB was originally formed in 1966 as a result of 'conflict of interest' concerns. From 1967 to 1974, it was placed under the structure of the Department of Transportation. In the latter year, the NTSB became a totally independent agency of the United States by virtue of the Independent Safety Board Act of 1974. The rationale behind the Act was to enable the NTSB to freely criticize the activities of the other agencies of the Department of Transportation, the legislative body concluding that "if the Board is under pressure from any administration to pull its punch or to tone down its reports or to gloss over government errors in transporta-
tion safety, then its watchdog function has been fatally compromised."

The Organization is composed of five members who are appointed by the President with the advice and consent of the Senate. One of the members is designated as Chairman by the President with the advice of the Senate, and one as Vice Chairman. Forming the Board’s permanent or regular staff are nine principal offices/bureaus; one of which is the Bureau of Accident Investigation where its Marine Division is responsible for the investigation of accidents at sea. (Illustration 4)


2. Authority and Jurisdiction. Under the Independent Safety Board Act of 1974, as amended (49 United States Code 1901 et seq.), the NTSB is empowered to investigate accidents in all modes of transport, i.e. air, sea, rail, road, and pipelines. It may investigate (or cause to be investigated) major marine casualties involving public/non-public vessels, and any other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would carry out the policy of the Act. It has:

(2.1) original jurisdiction over major marine ca-
sualties, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with the regulations prescribed by the Board and the Secretary of the Department of Transportation (jointly);

(2.2) concurrent jurisdiction with the USCG over marine accidents involving a public vessel and any other vessel; and

(2.3) appellate jurisdiction over the decisions of the Commandant of the Coast Guard revoking, suspending or denying a license, certificate, document, or register.

3. Purpose. NTSB investigation is a safety-related and not a fault-finding one. It encourages material witnesses at the incident to openly and freely give the true facts about what really went wrong, without any fear of being prosecuted or penalized later, on the basis of the outcome of the investigation. From this factual information, solutions to safety problems are derived.

4. Investigation Procedure. In as much as there is no compulsory legal requirement for casualty reporting to the Board, the USCG, where all reports are made, has the duty to advise the NTSB of the "major marine casualties" falling within the latter's jurisdiction. Once advised, the NTSB has then the option to investigate the case either independently or jointly with the USCG.
First Option - The NTSB independently conducts field investigations carried out by a team of men coming from various technical-staff-groups, with the investigating officer of the Marine Division acting as the Head. Evidence is gathered informally, usually by taking down notes. In some sensitive cases, however, public hearings or deposition proceedings are held.

Second Option.- The NTSB requests the USCG to conduct the investigation, at times with a NTSB representative (who may sit in and makes recommendations about the scope of investigation, calls and examines witnesses, and submits on request additional evidence). After completion of the investigation, the USCG Commandant forwards the records of proceedings to the NTSB which makes its own report/recommendations addressed to parties-in-interest and/or other government offices.

Joint Memorandum of Understanding (USCG and NTSB).

The Independent Safety Board Act of 1974, as amended, provided that NTSB investigations had priority over all federal investigations respecting every mode of transport. Nonetheless, it specifically restricted the Board's jurisdiction respecting marine casualties to "major marine casualties", without in any way diminishing the responsibilities of the USCG which had jurisdiction over investigation of all accidents. Thus, both NTSB and USCG had the
power to investigate major marine casualties; which arrangement did not only gain dissatisfaction on the part of the said offices but also was criticized in certain cases. In the USCG Cutter Blackthorn - SS Capricorn collision (Trampa Bay, 1980), where the NTSB participated in the USCG investigation albeit submitted a separate report, the public claimed that the USCG was investigating itself.

Consequently, a Joint Memorandum of Understanding was entered into by and between the NTSB and USCG in 1981, inter alia defining the investigative powers of each office in such a way that duplication of efforts could be avoided. The agreed CG/NTSB regulations governing the conduct of investigations are now contained in 46 CFR 4.40 and 49 CFR 850. And these are, as follows:

1. Preliminary Investigation by the Coast Guard –

(1.1) The Coast Guard conducts the preliminary investigation of marine casualties.

(1.2) The Commandant determines from the preliminary investigation whether:

(1.2.1) The casualty is a major marine casualty; or

(1.2.2) The casualty involves a public and a nonpublic vessel and at least one fatality or $75,000 in property damage; or
(1.2.3) The casualty involves a Coast Guard and a nonpublic vessel and at least one fatality or $75,000 in property damage; or

(1.2.4) The casualty is a major marine casualty which involves significant safety issues relating to Coast Guard safety functions e.g., search and rescue, aids to navigation, vessel traffic systems, commercial vessel safety, etc.

(1.3) The Commandant notifies the Board of a casualty as described in paragraph 1.2.

2. Marine Casualty Investigation by the Board -

(2.1) The Board may conduct an investigation under the Independent Safety Board Act of 1974 of any major marine casualty or any casualty involving public and nonpublic vessels. Where the Board determines it will convene a hearing in connection with such an investigation, the Board's rule of practice for transportation accident hearings in 49 CFR Part 845 shall apply.

(2.2) The Board shall conduct an investigation under the Act when:

(2.2.1) The casualty involves a Coast Guard and a nonpublic vessel and at least one fatality or $75,000 in property damage; or
(2.2.2) The Commandant and the Board agree that the Board shall conduct the investigation, and the casualty involves a public and nonpublic vessel and at least one fatality or $75,000 in property damage; or

(2.2.3) The Commandant and the Board agree that the Board shall conduct the investigation, and the casualty is a major marine casualty which involves significant safety issues relating to Coast Guard safety functions.

3. Cause or Probable Cause Determinations from Board Investigations -

After an investigation conducted by the Board under the above-paragraph (2), the Board determines cause or probable cause and issues a report of that determination.

4. Coast Guard Marine Casualty Investigation for the Board -

(4.1) If the Board does not conduct an investigation under the above-paragraphs (2.1), (2.2.2) or (2.2.3), the Coast Guard, at the request of the Board, may conduct an investigation under the Act unless there is an allegation of Federal Government misfeasance or nonfeasance.

(4.2) The Board will request the Coast Guard to conduct an investigation under the preceding paragraph
within 48 hours of receiving notice of a casualty.

(4.3) The Coast Guard will advise the Board within 24 hours of receipt of a request for CG investigation whether it will conduct an investigation under the Act.

5. Procedures for Coast Guard Investigation -

(5.1) The Coast Guard conducts an investigation under the above-paragraph 4 using the procedures in 46 CFR 4.01-1 through 4.23-1.

(5.2) The Board may designate a person or persons to participate in every phase of an investigation, including onscene investigation, that is conducted under the above-paragraph 4.

(5.3) Consistent with Coast Guard responsibility to direct the course of the investigation, the person or persons designated by the Board under the preceding paragraph may:

(5.3.1) Make recommendations about the scope of the investigation.

(5.3.2) Call and examine witnesses.

(5.3.3) Submit or request additional evidence.

(5.4) The Commandant provides a record of the pro-
ceedings to the Board of an investigation of a major marine casualty under the above-paragraph (5.1).

(5.5) The Board, under the Act, makes its determination of the facts, conditions, and circumstances, and the cause or probable cause of a major marine casualty, using the record of the proceedings provided by the Commandant under the preceding paragraph and any additional evidence the Board may acquire under its own authority.

(5.6) The investigation by the Coast Guard is both an investigation under the Act and under R.S.4450 (46 U.S.C. 239).
The Canadian System

The marine casualty investigation system in Canada is solely carried out by an independent safety board, the Canadian Transportation Accident Investigation and Safety Board (CTAISB).

1. General Overview. Inquiries on marine casualties were originally conducted on an ad hoc basis by officers of the Ship Safety Branch of the Canadian Coast Guard (CCG), Transport Canada, as part of their normal duties. That was until 1 April 1976 when the CCG Commissioner established for the purpose a Specialist Marine Casualty Investigations Division, CCGI/M which, although operated within the Coast Guard, was directly answerable to the Commissioner. Following the study on Marine Casualty Investigations in Canada by Bernard M. Deschenes, Q.C., the said Division left the Coast Guard, but remained in Transport Canada, and reported directly to the Marine Administrator. When the latter position was abolished in August 1975, the Division became directly answerable to the Inspector General of Transport Safety. Recently, however, it was transformed into an independent transport safety board, the CTAISB, which received Royal Assent on 29 June 1989 and came into effect on 29 March 1990, replacing and merging into one the Marine Division of Transport Canada, the Canadian Aviation Safety Board, and the Rails and Pipeline Investigation Unit of the National
Transportation Agency.

The Board consists of a maximum of five members, one of whom is appointed Chairperson and Chief Executive Officer. To say the least, at the time of writing, it is still in the process of finalizing its organizational structure and amalgamation of its five regional offices.

The governing laws/rules are found in the Canadian Shipping Act and the Canadian Transportation Accident Investigation And Safety Board Act.

2. Authority and Jurisdiction. The CTAISB has jurisdiction over marine occurrences:

(2.1) in Canada, including the internal waters and the territorial sea of Canada;

(2.2) in any other place, if

(2.2.1) Canada is requested to investigate the marine occurrence by an appropriate authority

(2.2.2) the marine occurrence involves a ship registered or licensed in Canada, or

(2.2.3) a competent witness to, or person having information concerning a matter that may have contributed to, the marine occurrence arrives or is found at any place in Canada
(2.3) related to an activity concerning the exploration or exploitation of the continental shelf, where the marine occurrence takes place in waters above the continental shelf.

3. Purpose. The fundamental objective of the CTAISB investigation is to advance transportation safety by making known the cause(s) and contributing factors of an occurrence; by identifying safety deficiencies; by making recommendations designed to eliminate or reduce any such deficiencies; and by initiating/conducting special studies and special investigations on matters pertaining to safety in transportation. No findings of the Board are construed as assigning fault or determining civil or criminal liability or are binding upon parties to any legal, disciplinary or other proceedings.

4. Investigation Procedure. In minor accidents or occurrences, the field investigating officer merely verifies for completeness the "WR Form" which is compulsorily required to be accomplished and submitted by the master or other persons responsible for the ship concerned in accordance with the Shipping Casualties Reporting Regulations.

In more serious casualties, the field investigating officer who is armed with the aforesaid "WR Form" proceeds to conduct a fact-finding investigation at the scene of the incident, inspects the ship, interviews witnesses privately (in camera) and compels the production of documents whenever necessary.
The Minister of Transport Canada has the discretion to call for a formal investigation on a specific casualty which causes a considerable degree of concern, which results in loss of life or lives, or where causes cannot be determined by a preliminary inquiry, or where special safety lessons or practices are brought to his attention. He appoints a Commissioner (generally a judge) and two or more assessors to assist the latter.

Such investigation is held in public and in a formal procedure, with a Commission Counsel presenting the case (in representation of the public interest) and the parties-in-interest participating in the hearing.

It must be noted, however, that the formal investigation procedure discussed above is undergoing revision along with the re-structuring of the Board itself which is about to enforce its autonomous authority. The most significant change in the procedure as proposed under the draft "Regulations Respecting the Canadian Transportation Accident Investigation and Safety Board" is that the whole activity shall be undertaken by the independent Board, in lieu of a Commissioner appointed by the Minister of Transport Canada.
Conclusion

As already pointed out in Chapter II, the present marine casualty investigation system in the Philippines has no particular agency of the government that really assumes the responsibility of investigation of marine cases for the primary purpose of improving water transport safety. MARINA and PCG investigations are not actually safety-related but are disciplinary or penal in nature. Because the said offices are regulatory and enforcement bodies, the possibility that their actions would entail many inconsistencies and insincerities is strong.

After analyzing the American and Canadian Systems discussed above, the author is confident to say that the idea of having an independent transport accident investigation and safety board whose primary purpose in investigation is purely for the enhancement of maritime safety, and not the imputation of fault, is the appropriate and proper solution to the issues so raised. The features of the neutral and independent board and its safety investigation are: no regulatory, operational, and promotional responsibilities; non-adversarial nature; and complete separation from litigation and enforcement activities. Along with the creation of a new body, a new set of rules of procedure and techniques for investigation on the same objective is correspondingly necessitated.
Chapter IV

MODEL RULES OF INVESTIGATION PROCEDURES AND PRACTICE

This Chapter shall provide model rules of investigation procedures and practices which the author has built, selectively choosing and adapting parts taken from the different laws/rules/regulations prevailing in local and foreign jurisdictions and other sources. In addition, these investigation processes have been drawn upon as appropriate for possible application in the Philippine marine casualty investigation system.

1. Authority. The source of legal authority for inquiries/investigations, as well as an implementation basis for the relevant international obligations, has to be embodied in the national legislation. It is therefore necessary for the government to pass a law to (a) define what is a casualty, (b) provide for the circumstances in which the administration may conduct inquiries/investigations, and (c) prescribe the nature and extent of authority vested in all those charged with responsibility in such matters.

2. Purpose. The primary objective of marine casualty investigation should be the provision of better safety and protection of lives and property at sea. The investigation must be a factfinding one and must not be aimed at determining or apportioning blame. However, the investi-
gating authority should not be prohibited from making objective findings of fact from which it may be deduced or concluded that a person is at fault and should become subject to subsequent disciplinary or civil liability actions. The marine casualty investigation should be totally independent from any disciplinary or civil liability processes. The evidence adduced in one must not be admissible in the other.

3. Jurisdiction. The Chairman of the Marine Transport and Safety Board (MTSB) or his duly authorized investigating officer or Marine Tribunal shall have exclusive jurisdiction to investigate all marine casualties/accidents, involving Philippine registered or licensed ships wherever they occur, or involving foreign ships when they occur within the navigable waters of the Philippines to the extent consistent with international law.

4. Marine Casualty/Accident, Definition. The term "marine casualty/accident" shall mean any casualty or accident involving any vessel which occurs within the navigable waters of the Philippines, or any casualty or accident involving any Philippine vessel which occurs outside Philippine territorial waters. It shall include any occurrence involving a vessel which results in damage to a vessel, its apparel, gear, and/or passengers and crew, and inter alia includes sinking, collision, strandings, groundings, founderings, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect and impair the seaworthiness thereof.
5. Reporting of Marine Casualties/Accidents, Requirements. The owner (or bareboat charterer) and master or person in charge of the vessel involved in a marine accident is required by law to report in detail the occurrence directly to the MTSB. A verbal report must be made within 24 hours from the time of accident, and a duly accomplished Written Casualty Report (WCR) form must be submitted as soon as possible.

Failure to comply with the herein provided requirement will subject the owner (or bareboat charterer) and the master or person in charge of the vessel involved to civil penalty.

6. Nature and Extent of Investigation. The investigating authority should determine the causes of marine casualties and any contributing factors, identify safety deficiencies, and recommend corrective courses of action. All marine casualty reports should be examined and causal determinations made. Where conclusions can easily be reached, no further investigations should be carried out and appropriate compilation of the data should be effected in order to help determine safety deficiencies or trends and to facilitate other analyses. When such reports are incomplete or not sufficiently informative to make causal determinations, further verification should informally and summarily be carried out. When causal determinations cannot be reached through examination and verification of marine casualty reports, the investigating authority should carry out further investigations until such determination can be made, except where it is apparent that
this determination cannot be achieved. When it appears that something unusual or something complex has occurred, or where it is apparent that important safety lessons can be learned, the investigating authority should investigate to the fullest extent possible until the facts are clearly established to its satisfaction. The investigating authority shall have full discretion as to the degree of any investigation to be carried out, provided that the exercise of that discretion is supported by reason in all cases.

7. Preliminary Inquiries.

7.1 Generally. Any duly appointed Investigating Officer of the MTSB may conduct a preliminary investigation as an initial step in determining the contributory factors and causes of marine casualties/accidents, and whether a hearing should be held. Whenever the preliminary investigating officer feels that there is reasonable doubt as to the facts and believes that the casualty/accident is of an unusual character, he shall recommend for a formal investigation.

7.2 Powers and Duties of Preliminary Investigating Officers. The investigating officer in a preliminary investigation may examine any relevant papers, documents or records, interview witnesses, and go on board and examine vessels and equipment. He may obtain and collect evidence including but not limited to affidavits, oral or written, signed or unsigned statements, books, papers, documents or records; and may make copies, take photo-
graphs, and remove and mark any original documents or objects for future identification. It is the duty of every Preliminary Investigating Officer to ensure the complete development of all pertinent facts, to establish to the best of his ability the cause of any casualty, and to make such recommendations in his report as will in his best judgement aid in preventing a recurrence of the casualty, and in determining whether further action should be taken.

7.3 Conduct Of Preliminary Inquiry.

7.3.1 Venue. Whenever feasible, the proceedings under these rules should be conducted in the office of the MTSB; but these may be conducted elsewhere with the consent of the Chairman.

At The Scene Of Casualty. On being directed to conduct a preliminary inquiry, the investigating officer should proceed to the scene as soon as possible, using whatever transportation is most readily available. In some cases, due to the urgency of the situation, the investigating officer may proceed to the scene without waiting for orders, and arrange for the appointment to be sent to him in the area where the inquiry is to be conducted.
Place Of Inquiry - Interviewing Witnesses. The venue must largely depend on the circumstances, including the availability of suitable facilities for conducting the proceedings. This may prove difficult where the inquiry takes place on board ship. Nevertheless privacy is an essential requirement, and one which may well tax the investigating officer's resourcefulness, tact and firmness. Where a vessel is lost, witnesses should be interviewed in a suitable place close to where they were brought ashore. On such occasions, it may be necessary to enlist the assistance of local authorities. In other words, interviews must be carried out in a convenient place, one in which privacy is assured and where it is possible to segregate the waiting witnesses and interview them one at a time. Subpoenas to appear at the headquarters should also be served on any witnesses that appear reluctant or unwilling to attend the inquiry.

7.3.2 Who May Be Present At The Preliminary Inquiry. No person may attend an inquiry other than the following:

(a) the investigating officer;

(b) a person or persons requested by the investigating officer to advise or assist him;
(c) a person while giving evidence at the inquiry; and

(d) counsel for a person referred to in paragraph (c), while that person actually gives evidence, but who shall not be allowed to actively participate in the proceedings.

7.3.3 Interview Of Witnesses. As a general rule, the interview of witnesses should be conducted informally; however, the right for investigating officers to require the oath at their discretion should be reserved.

Wherever possible, the philosophy of "interview" should be employed rather than that of "interrogation". An interview denotes a meeting in which the investigating officer approaches the witness on a co-operative but neutral basis.

The interview should not be restricted to the crews of the ships involved but should also include any other persons who may have pertinent information.

(a) Importance of early examination of witnesses. The early examination of witnesses, while the events are still fresh in their minds, is crucial. The investigating officer must try to be
the first to question the witnesses after the casualty, when their testimony is likely to be given more freely and frankly, unaffected by considerations of their testimony's implications or its effects on themselves or others, and uninfluenced by the interested parties. If the preliminary inquiry is unduly delayed, the witnesses might disperse and be unavailable such that the gathering of evidence may be much more difficult and costly.

(b) Assembling Of Witnesses. All available witnesses must be assembled before the start of the proceedings. They should be advised of the nature and purpose of the inquiry, the statutory authority under which it is held, and the manner by which it shall be conducted.

(c) Types of witnesses. They are:

(c.1) Voluntary Witnesses - come forward to give evidence even though they have not been called to do so. While treating these persons in a friendly manner, the investigating officer should make every effort to determine their possible motives for
coming forward. Such information should assist in the assessment and evaluation of their testimony.

(c.2) Willing Witnesses – include persons who have been called to be interviewed and who appear to be cooperative and willing. Such witnesses, if talkative, should first be permitted to complete what they have to say, provided it is relevant. Then, by specific questions, the investigating officer should seek answers to the essential facts.

(c.3) Unwilling Or Hostile Witnesses – should be interviewed through a direct and authoritative ‘interrogation’ (rather than ‘interview’) approach. They should be reminded that they must answer the questions asked of them and that failure to do so could hold them liable for contempt under the Administrative Code Of The Philippines. If possible, these witnesses should be served with a subpoena before the start of the interview.

(d) Recording Of Witness Interviews. Investigating Officers should prefera-
bly record the testimony of witnesses by mechanical means and they should also have the discretion to take written statements or to rely on their own notes. Under normal circumstances testimonies should be tape-recorded but not transcribed. However, when it seems probable from the outset that a formal investigation will be necessary, the investigating officer may avail himself of the services of a court reporter or other stenographic services to transcribe the proceedings. The transcribers should be instructed not to make copies, and to give the original transcripts duly signed by them to the investigating officer. Except for official court reporters (who by the nature of their duties have already been sworn), all transcribers should be sworn before the start of the inquiry.

7.3.4 Production of Documents. The investigating officers are empowered to require and enforce the production of all books, papers or documents that are considered important for the purpose of the preliminary inquiry. However, they cannot retain them indefinitely. Thus they should make contingency arrangements to have photocopies made of the items they intend to include in their report.
Care should be taken to check for forged or altered documents. Sometimes, investigating officers will know in advance from the nature of the casualty what books or documents should be produced at the inquiry. They should ensure the production of these items by serving a Subpoena Duces Tecum on the appropriate witnesses and listing the items that should be produced.

7.3.5 Use of Charts, Sketches and Photographs. In casualties such as groundings and strandings, or collisions in narrow channels, witnesses able to do so should be asked to mark the approximate positions on a chart supplied by the investigating officer. Witnesses doing so should use a separate chart, and should be required to place their initials next to the marked position.

In collision cases, some witnesses may find it easier to sketch rather than describe the relative angles of approach from that moment until the collision. Such sketches should also provide a better description of both angle and point of collision. Sketches should also be initialled by the witnesses concerned.

Photographs taken either by the investigating officer or others, and properly marked for identification, should provide excellent evidence of the angle and point of impact and also a fair estimate of the speed of the striking vessel.

8.1 General. It is advisable to hold a formal investigation in all cases of serious marine casualties resulting in loss of life, substantial pollution or substantial property damage. The formal investigation shall consist of a hearing that is open to the public (save to the extent that, when national security is endangered, any part of the evidence or any argument relating thereto should be heard in private) and, during which, witnesses are examined for purposes of complementing the preliminary inquiry and airing publicly the facts and the safety issues involved. It shall be purely a factfinding proceeding that does not involve pleadings or an adversarial process.

8.2 Hearing Officers; Marine Tribunal. Formal investigations may be carried out by:

(a) a single hearing officer, preferably the Chief or Senior Investigating Officer of the MTSB; or

(b) a Marine (administrative) Tribunal of at least three members, including a designated Chairperson, which the Chairman of the MTSB may form in very serious marine cases.
8.3 Powers and Duties of Hearing Officers/Marine Tribunal. The Hearing Officer/Marine Tribunal shall have the power to set hearings; administer oaths; identify and compel the attendance of persons having knowledge of the subject matter under investigation to testify at the scheduled hearings; require the production of relevant evidence including but not limited to books, papers, documents and records; rule upon the nature and admissibility of evidence; board and inspect the vessels and their appurtenances, and visit the scene of the casualty. This implies the exercise by the Hearing Officer/Marine Tribunal of all control necessary or appropriate to ensure the orderly and procedural conduct of the hearing and the development of relevant and material facts.

8.4 Venue. The formal investigation may be held at the hearing room in the building where the MTSB is located or elsewhere at the sound discretion of the Hearing Officer/Marine Tribunal.

8.5 General Admission to Hearings. The Hearing Officer/Marine Tribunal may admit interested parties and/or states with their counsels or official representatives, and observers to attend the hearings; provided, the Hearing Officer/Marine Tribunal may exclude the general public and/or the media when matters of confidentiality or questions of national security arise.

8.6 Recorder, Notices/Subpoenas. There should be appointed an official Recorder who shall give written notice in advance of any hearing to all known interested
parties or states, specifying the date, time, place and subject matter of the hearing. Alternatively or additionally, a notice of hearing may be given by public announcement. The recorder shall prepare for the Hearing Officer/Officer/Marine Tribunal's signature subpoenas to witnesses for them to appear at the place and date of hearing and testify. Notices/subpoenas must be sent personally or, if impractical, by registered mail to the parties and witnesses at their last known addresses at least five days prior to the date set for hearing.

The recorder shall take charge of the recording and transcription of the proceedings and, where practicable, of the exhibits in evidence, and also of the keeping of the whole records of the case.

8.7 Hearing Proper. The hearing shall proceed on the date, time and place, as pre-scheduled, in the following order:

(a) The Hearing Officer or Chairperson of the Marine Tribunal calls the session into order;

(b) The Recorder will publicly make known the preliminary inquiry report together with all the supporting evidence, and it shall then be open to comments/arguments of the interested parties;

(c) The proceedings shall continue with
the production and examination of witnesses of facts, including the preliminary investigating officer, and expert witnesses, who may be cross-examined by the interested parties;

(d) The interested parties may be allowed to adduce documentary evidence, call witnesses, and cross-examine witnesses called by any other party. Every formal investigation shall be conducted in such a manner that if substantial criticism is made against any person that person shall be given the opportunity of making his defense either in person or otherwise;

(e) The Hearing Officer or Marine Tribunal may adjourn the proceedings from time to time, and where the adjournment is asked for by any party, the hearing officer or tribunal may impose such terms as payments of costs or otherwise as he thinks just as a condition of granting the adjournment; and

(f) At the end of the proceedings, any interested party may be allowed to make a final statement or to submit a written memorandum within five
days, as to assist the hearing officer or tribunal in resolving the case.

9. Reports of Marine Casualty Investigations. Upon completion of the preliminary inquiry or the formal investigation, as the case may be, the Investigation Officer/Hearing Officer/Marine Tribunal should submit to the Chairman of the MTSB, an investigation report which should include a factual narrative of the events, an objective analysis of the evidence and findings as to the contributing factors and causes of the marine occurrences, as well as other safety-related findings, and his recommendations based thereon. It is necessary that the identity of the ship and shipowner be stated in the report except when such identification will result in the determination of blame or liability.

10. Final Action.

10.1 Board’s Decision. Upon receipt of the report and file or record of the case, the Board shall proceed to make and render its Decision in the form of “Report and Safety Recommendations”.

10.1 Copies of Decision – Service; Response. Copies of the Board’s Decision shall be sent to all concerned parties, offices, and states. In the case of government offices, they must respond to each recommendation formally and in writing within ninety days from receipt of the Board’s Decision. The response shall indicate the intention of the office concerned to-
(a) initiate and conduct procedures for adopting such a recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(b) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed to the remainder of such a recommendation; or

(c) refuse to initiate or conduct procedures for adopting such a recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall make copies thereof available to the public.
Chapter V

RECOMMENDATIONS

This Chapter shall outline a new administrative structure and the procedural rules envisioned to be necessary for the improvement of the marine casualty investigation system in the Philippines. Both will be framed on the basis of the analytical study that the author has undertaken herein and exhaustively discussed in the earlier chapters. By way of recommendations which are believed to be essential for the achievement of the previously discussed goals and objectives for improving maritime safety, the following is offered as an improved marine casualty investigation system for the Philippines.

The basic recommendations are made, knowing that effective implementation can only be achieved with the cooperation of the legislative body of the government, since amendments of the existing laws will be required. It is to be emphasized that the budgetary issues related to these proposals have been consciously considered, striving to maximize the benefits of improved maritime safety for the people of the Philippines, the most modest economic cost. The government of the Philippines must seriously take into account that so many lives are lost from sea disasters due to lack of sufficient administrative and technical knowledge on how to prevent such
occurrences. The government must begin to recognize that simple geography makes the Philippines a maritime nation. The stimulation of economic growth in all sectors in which the government has programs will be tied to the efficient and proper use of the nation's maritime resources and infrastructure. These programs must work hand-in-hand with maritime sector programs. Otherwise, development in other sectors will overstress already fragile maritime capabilities and this in turn will stifle the desired economic growth while costing more and more in terms of life and property lost at sea. It is high time that the Philippine government, whose priorities have long been directed at the many problems confronting it in other areas (e.g. education, health, labour, and insurgency) must turn its focus to the cooperative role that must be played by maritime affairs. Otherwise, economic growth will come very slowly and only at the expense of needless loss of lives in increasing numbers of sea tragedies. To fuel a nation's economic engine at the expense of the needless loss of life of its citizens is simply not acceptable.

1. New Structure.

The difficulties have previously been explained concerning the adverse implications created by the dual jurisdiction given to MARINA and PCG. Both of these organizations are regulatory bodies and have potential for "conflict of interest" in carrying out their respective responsibilities. Thus, there is a need for a new structure to serve as investigative arm of the government.
in marine cases, providing recommendations for the evolution of rules and regulations that will lead to the advancement of maritime transport safety.

1.1 Legislative Requirements

Recommendation ONE: A law should be passed creating an independent marine accident investigation and safety board, to be called the Marine Transport Safety Board (MTSB) which shall be directly under the Office of the President and shall report annually to Congress.

A government body in the Philippines is created only by law. Hence, legislation is required to establish the proposed board.

The main point in giving autonomous authority to the board is the "impartiality of marine accident investigations". This can be attained only when that body is devoid of the perception of 'conflict of interest' and can be 'unbiased or unprejudiced'. By playing a role solely as investigating authority and not involving itself in other areas of maritime activities like the issuance of clearances to sail, enforcement of maritime laws and rules, this can be achieved. There is actually a need to separate casualty investigation from regulatory and enforcement activities.

The 'independence' of the board is contemplated to mean the absence of subordinance to any office lower than the major branches of the government, i.e. the Office of
the President, Congress, and the Supreme Court. That the board has to report annually to Congress, just like any other independent agency of the government does for practical reasons such as budgetary considerations, would not diminish its independence.

The board which would have full freedom of action can criticize the deficiencies of other government offices and exercise a sort of 'watchdog function', thereby eliminating or substantially reducing the existing risks of 'conflict of interest' also inherent in the present arrangements in the Philippines.

1.2 Jurisdictional Competence

Recommendation TWO: The Board should have exclusive jurisdiction to investigate all marine casualties/accidents, involving Philippine registered or licensed ships wherever they occur, or involving foreign ships when they occur within the navigable waters of the Philippines to the extent consistent with international law.

The jurisdictional requirement must be clearly defined in national legislation to provide for the limits within which the competence of the investigating authority could be exercised. Not only Philippine flag ships can be the subject of jurisdiction but also foreign ships involved in occurrences that, one way or the other, disturb the tranquility and security of the country. This is fundamental under the principle of a state's sovereignty.
1.3 Administrative Composition

Recommendation THREE: The Board should consist of at least three members, including a Chairman, who shall all be appointed by the President and confirmed by Congress on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulations.

Recommendation FOUR: The term of office of members of the Board shall be five years. Any individual appointed to fill a vacancy occurring in the Board prior to the expiration of the term of office for which his predecessor was appointed shall serve for the remainder of the term. Upon expiration of his term of office, a member shall continue to hold over until his successor is appointed and shall have qualified. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

Recommendation FIVE: Directly under the members of the Board should be a regular staff of a small, limited number of qualified assisting personnel. The assisting Marine Casualty Investigators must be chosen from among suitably qualified applicants, having expertise in either naval architecture, nautical engineering, marine engineering and/or law. They shall be designated as The Chief or Senior Investigating Officers and
Investigating Officers.

Recommendation SIX: Provisions should be made for Investigating Officers to undergo continuing educational/training courses to remain abreast with the changes in their technical fields and other areas, such as: interview and interrogation techniques; photography; safety standards, classification societies, IMO, and national standards.

Recommendation SEVEN: Whenever necessary, the Board may hire the services of technical consultants/advisers.

Marine casualty investigation is a specialized task that requires from those selected for such duties high integrity and full public trust and also the necessary qualifications and skills.

In particular, the investigating officers to whom people would give testimonies must be fully qualified to carry out their authority. They should have qualifications comparative or superior to those witnesses they shall possibly interview. It follows, therefore, that investigating officers who are seafarers should possess certificates of competency as master mariner or chief engineer, or equivalent experience; non-seafaring investigators should possess a degree or diploma in naval architecture, nautical engineering, marine engineering or law.

For investigations to be carried out effectively, fully trained and experienced personnel must be used. In
addition, such personnel must also possess certain qualities, such as inquisitive natures, aptitude for investigative work, impartiality, objectivity, diligence, patience and a sense of dedication.

When investigating casualties which involve areas outside their own discipline, investigating officers should request the assistance of technical advisers who have the appropriate expertise.

2. Investigation Procedures and Processes

Along with the administrative re-structuring of the marine casualty investigation system in the Philippines, the need for a new set of rules of investigation processes has been discussed in the previous chapters. Chapter IV of this paper gives a model of such rules. On that basis, the following recommendations are considered to be proper and appropriate.

2.1 Authority.

Recommendation EIGHT: A law should be passed to (a) define what is a casualty/accident, (b) provide for the circumstances in which the administration may conduct inquiries/investigations, and (c) prescribe the nature and extent of authority vested in all those charged with responsibility in such matters.

It is a common rule and practice in almost all jurisdictions that sources of legal authorities and responsi-
lities must be specifically provided for in a national law which should also consider international obligations.

2.2 Purpose.

Recommendation NINE: The primary objective of marine casualty investigations should be the improvement of safety of life and property at sea. The safety-related investigation must be a factfinding one and must not determine or apportion blame. However, the investigating authority should not be prohibited from making objective findings of fact from which it may be deduced or concluded that a person is at fault so as to be subject to disciplinary or civil liability action. The marine casualty investigation should be totally independent and separate from any disciplinary or civil liability processes.

The marine casualty investigation is hereby contemplated to be simply a mode of identifying safety deficiencies, finding out the causes of the occurrences, acquiring knowledge therefrom, and recommending measures to prevent recurrences. The aspects of investigation on discipline and civil penalty, wherein the validity of licenses and other pertinent navigation documents is in question, should be discarded in this instance and must be left to the sound disposition of the issuing authorities which have the corresponding right to revoke or suspend what they had previously issued. Hence, a totally independent marine casualty investigation separate from the disciplinary and civil liability actions is recommended.
The rationale behind this recommendation is that primary safety aims ought not to be impeded by other considerations. Disciplinary and civil liability considerations could result in such impediments because the threat of future penalties inhibits witnesses and therefore prevents all the facts from being brought out. Likewise, the issues to be considered become more complicated so that the investigation itself may become more prolonged and more costly.

2.3 Jurisdiction.

Recommendation TEN: The investigating authority should have exclusive jurisdiction to investigate all marine casualties/accidents, involving Philippine registered or licensed ships wherever they occur, or involving foreign ships when they occur within the navigable waters of the Philippines to the extent consistent with international law.

Just like the source of legal authority, the jurisdiction of those in charge of investigations must clearly be defined by law, also taking into account the state's international obligations.

2.4 Marine Casualty/Accident, Definition

Recommendation ELEVEN: The term "marine casualty/accident" shall mean any casualty or accident involving any vessel when it occurs within the navigable waters of the Philippines, or any casualty or accident involving
a Philippine documented or licensed ship wherever occurring. It shall include any occurrence involving a vessel which results in damage to a vessel, its apparel, gear, and/or passengers and crew, and inter alia includes sinking, collision, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect and impair the seaworthiness thereof.

The above recommended definition has been developed by the author out of other sources giving similar or standardized definition which are deemed acceptable and applicable to the Philippine marine casualty investigation system.

It must be noted that "casualty" and "accident" are treated interchangeably as to refer to one and the same thing.

2.5 Reporting of Marine Casualties/Accidents.

Recommendation TWELVE: The owner (or bareboat charterer) and master or person in charge of the vessel involved in a marine accident is required by law to report in detail the occurrence directly to the Board. A verbal report must be made within 24 hours from the time of accident, and a duly accomplished written casualty report (WCR) form must be submitted as soon as possible. Failure to comply with the reporting requirement should subject the owner (or bareboat charterer) and
the master or person in charge of the vessel involved to civil penalty.

The mandatory requirement of reporting shipping casualties or accidents especially those resulting in loss of life or serious injury or damage to property, and the corresponding penalty for non-compliance thereof should be provided for by law. The investigating authority should define through regulations those casualties and accidents which must be reported.

2.6 Nature and Extent of Investigation.

Recommendation THIRTEEN: To improve further safety of lives and property in the marine mode of transport, the investigating authority should determine the contributing factors and causes of marine casualties, identify safety deficiencies, and recommend corrective courses of action. All marine casualty reports should be examined and causal determinations made; where conclusions can easily be reached, no further investigations should be carried out and appropriate recordings should be effected in order to help determine safety deficiencies trends or other analyses. When such reports are incomplete or not sufficiently informative to make causal determinations, further verification should informally and summarily be carried out. When causal determinations cannot be reached through examination and verification of marine casualty reports, the investigating authority should carry out further investigations until such determination can be made except...
where it is apparent that this determination cannot be achieved. When it appears that something unusual or something complex has occurred or where it is apparent that important safety lessons can be learned, the investigating authority should investigate to the fullest extent possible until the facts are clearly established to its satisfaction. The investigating authority shall have full discretion as to the degree of any investigation to be carried out, provided that the exercise of that discretion is supported by reason in all cases.

On account of the recommended compulsory legal requirement for the reporting of marine occurrences to the proper authorities, there is a strong possibility of congestion of the reports of cases, the investigation of a great majority of which would not accord any benefit whatsoever and, if all were investigated fully, would be extremely costly for the government.

It is therefore advisable that the decision to investigate as well as determine the nature and extent of investigation (either by way of an informal or preliminary inquiry or formal investigation) be left to the sound discretion of the investigation authority, which discretion must be acceptable.
2.7 Preliminary Inquiries.

Recommendation FOURTEEN: Any duly appointed investigating officer of the Board may conduct a preliminary investigation as an initial step in determining the contributory factors and causes of marine casualties/accidents, and whether a hearing should be held. Whenever the preliminary investigating officer feels that there is reasonable doubt as to the facts and believes that the casualty/accident is of an unusual character, he shall recommend a formal investigation.

Recommendation FIFTEEN: The preliminary investigating officer may examine any relevant papers, documents or records, interview witnesses, and go on board and examine vessels and equipment. He may obtain and collect evidence including but not limited to affidavits, oral or written, signed or unsigned statements, books, papers, documents or records and may make copies, take photographs, and remove and mark any original documents or objects for future identification. The preliminary investigating officer must ensure the complete development of all pertinent facts, to establish to the best of his ability the cause of any casualty and to make such recommendations in his report as will in his best judgment aid in preventing a recurrence of the casualty and in determining whether further action should be taken.

Recommendation SIXTEEN: Whenever feasible, the proceedings should be conducted in the office of the Board;
but these may be conducted elsewhere with the consent of the Chairman of the Board. On being directed to conduct a preliminary inquiry, the investigating officer should proceed to the scene as soon as possible, using whatever transportation is most readily available. In some cases, due to the urgency of the situation, the investigating officer may proceed to the scene without waiting for orders, and arrange for the appointment to be sent to him in the area where the inquiry is to be conducted.

Recommendation SEVENTEEN: No person may attend the inquiry other than the investigating officer, persons requested by the investigating officer to advise him, and a person giving evidence by himself or by counsel. However, counsels shall not be allowed to actively participate in the inquiry.

Recommendation EIGHTEEN: All available witnesses must be assembled before the start of the proceedings. They should be advised of the nature and purpose of the inquiry, the statutory authority under which it is held, and the manner by which it shall be conducted.

Recommendation NINETEEN: The interview of witnesses should be conducted informally; however, the right for the investigating officer to require the oath shall be reserved. In short, whenever possible, witnesses should be interviewed and not interrogated. The interview must be carried out in a convenient place, one in which privacy is assured and where it is possible
to segregate the waiting witnesses and interview them one at a time.

Recommendation TWENTY: The investigating officer must try to be the first to question the witnesses after the casualty, when their testimony is likely to be given more freely and frankly, unaffected by considerations of their testimony’s implications or its effects on themselves or others, and uninfluenced by the interested parties. The investigating officer should make every effort to determine the possible motives of voluntary witnesses and such information should assist him in the assessment and evaluation of their testimonies. Willing witnesses, if talkative, should first be permitted to complete what they have to say, provided it is relevant; after which, the investigating officer should ask specific questions as to the essential facts. If possible, unwilling or hostile witnesses should be served with a subpoena before the start of the interrogation. They should be advised that they must answer the questions and that their failure could subject them to the penalty of law.

Recommendation TWENTY-ONE: Investigating officers should preferably record the testimony of witnesses by mechanical means and they should also have the discretion to take written statements or to rely on their own notes. Under normal circumstances, testimonies should be tape-recorded but not transcribed. When it seems probable from the outset that a formal investigation will be necessary, the investigating officer may obtain the
services of a court reporter or other stenographic services to transcribe the proceedings. The transcribers should be instructed not to make copies and to give the original transcripts duly signed by them to the investigating officer. Except for official court reporters (who by the nature of their duties have already been sworn), all transcribers should be sworn before the start of the inquiry.

Recommendation TWENTY-TWO: The investigating officer should be empowered to require and enforce the production of all books, papers or documents that they consider important for the purpose of the preliminary inquiry; however, they cannot retain them. They should rather make contingency arrangements to have photocopies of the items they opt to include in their report. Care should be taken to check for forged or altered documents. The investigating officer should ensure the production of books, papers or documents by serving a subpoena duces tecum on the appropriate witnesses and listing the items that should be produced.

Recommendation TWENTY-THREE: In casualties such as groundings and strandings, or collisions in narrow channels, witnesses able to do so should be asked to mark the approximate positions on a chart supplied by the investigating officer. They should also be asked to use a separate chart and be required to place their initials next to the marked position. In collision cases, sketches made by witnesses to show the relative
angles of approach to the time of collision should provide a better description of the angles and the point of collision. The sketches should also be initialled by the witnesses concerned. Photographs taken by the investigating officer or others should properly be marked for identification purposes and should provide excellent evidence of the angles and point of impact and a fair estimate of the speed of the striking vessel.

Obviously, a preliminary inquiry is conducted for a dual purpose, i.e. to determine the probable cause(s) of a casualty and the safety measures, and whether there is a need to proceed to a formal investigation of the case.

The idea of holding the proceedings in a preliminary inquiry with some sorts of privacy and informality is aimed at maintaining the confidentiality and sacredness of the vital and first-hand information gathered thereat. This is the main distinction between a preliminary inquiry and a formal investigation which is rather open and public.

In conducting preliminary inquiries, the time element is of the essence. The investigating officer must proceed to the scene of the casualty and collect relevant and material evidence the soonest possible and without much unnecessary delay; otherwise, he might lose the chance of gaining fresh and genuine information. Witnesses may be influenced by the interested parties or go into hiding so that the investigating officer may find it difficult to
locate them and obtain their accounts about the occurrence. To deal with the witnesses, the investigating officer must assess and evaluate their credibility and motive in testifying.

The investigating officer upon whom a large scale of discretion is lodged must exercise this with objectivity, tact, and fairness. He has full control over the conduct of the proceedings to see to it that there will be order and continuity in the process.

2.8 Formal Investigation

Recommendation TWENTY-FOUR: A formal investigation should be held in all cases of very serious marine casualties resulting in loss of life or substantial property damage. The formal investigation should consist of a hearing that is open to the public (save to the extent that, in the interest of justice or other good and sufficient reason in the public interest, any part of the evidence or any argument relating thereto should be heard in private) and during which witnesses are examined for purposes of complementing the preliminary inquiry and airing publicly the facts and the safety issues involved. Formal investigations should be purely a factfinding proceeding that does not involve pleadings or adversarial processes.

Recommendation TWENTY-FIVE: There should be a Hearing Officer, preferably the Chief or Senior Investigating Officer, or a Marine Tribunal of at least three
members, including the Chairperson, to be appointed by the Chairman of the Board, to conduct the formal investigation in very serious marine cases.

Recommendation TWENTY-SIX: The Hearing Officer/Marine Tribunal should have the power to set hearings; administer oaths; identify and compel the attendance of persons having knowledge of the subject matter under investigation to testify at the scheduled hearings; require the production of relevant evidence including but not limited to books, papers, documents and records; rule upon the nature and admissibility of evidence; board and inspect the vessels and their appurtenances; and visit the scene of the casualty. The Hearing Officer/Marine Tribunal should have all the control necessary or appropriate to ensure the orderly and procedural conduct of the hearing and the development of relevant and material facts.

Recommendation TWENTY-SEVEN: The formal investigation must be held in the hearing room within the same building where the MTSB is located or elsewhere at the sound discretion of the Hearing Officer/Marine Tribunal.

Recommendation TWENTY-EIGHT: The formal investigation should be open to the general public, regardless of whether they are real-parties-in-interest or mere observers. A proviso is that the Hearing Officer/Marine Tribunal may exclude the general public and/or the media when matters of confidentiality or questions
of national security arise.

Recommendation TWENTY-NINE: There should be appointed an official Recorder who shall take charge of the recording and transcription of the proceedings and of the exhibits in evidence, and of the keeping of the whole records of the case. The Recorder should give written notices to all known interested parties or states and subpoenas to witnesses in advance of any hearing, specifying therein the date, time, place and subject matter of the hearing.

Recommendation THIRTY: Notices/subpoenas must be sent personally or, if impractical, by registered mail to the parties and witnesses at their last known addresses at least five days before the hearing.

Recommendation THIRTY-ONE: The hearing should proceed on the time, date, and place, as pre-scheduled, with the Hearing Officer or Chairperson of the Marine Tribunal formally opening the session. The recorder should present to the public the preliminary inquiry report and its supporting evidence which shall be subject to comments/arguments of the interested parties. The interested parties should be allowed to adduce their own evidence and cross-examine the witnesses for the other parties. At the end of the proceedings, real-parties-in-interest should be allowed to make a final statement or to submit a written memorandum within five days; which statement/memorandum must be considered by the investigating officer in his assessment of the
case and preparation of his report.

In major marine casualties, a formal investigation which is open to the public should be conducted. Here, real-parties-in-interest are entitled to participate in the proceedings, to adduce evidence, and to examine and cross-examine witnesses whose testimonies are placed under oath; the owners or charterers and the master of the ship concerned are always made parties thereto.

The formal investigation shall be based on, but not limited to, the contents of the preliminary inquiry report.

It shall be in the form of a hearing which is conducted with orderliness and proper solemnities.

2.9 Reports of Marine Casualty Investigation

Recommendation THIRTY-TWO: Upon completion of the preliminary inquiry or formal investigation, as the case may be, the Investigating Officer/Hearing Officer/ Marine Tribunal should submit to the Chairman of the MTSB, an investigation report which should include a factual narrative of the events, an objective analysis of the evidence and findings as to the contributory factors and causes of the marine occurrences, as well as other safety-related findings, and the recommendations based thereon.

An after-investigation-report, of course, is very
essential as it will be the basis for the administrative action or disposition of the case by the Board itself which has the task of making objective analysis of the facts and then making the final report and recommendations towards the advancement of safety protection at sea.

2.10 Final Action

Recommendation THIRTY-THREE: Upon receipt of the report mentioned in paragraph 2.9 and the file or record of the case, the Board shall render its Decision in the form of "Report and Safety Recommendations". Copies of the Board Decision shall be furnished to all concerned parties, offices, and states. Any addressee government office must be required by law to respond to every safety recommendation formally and in writing within ninety (90) days from receipt of the Decision. Such responses must be made available to the public's perusal.

The law creating the Board should include provisions defining the authority of the Members of the Board to render the final report and recommendations in accordance with its goals and objectives. Two members may be made to constitute a quorum in furtherance of such authority.

Every party concerned must be furnished with a copy of the Board Report. Whenever the safety recommendation is addressed to any government agency for appropriate action, the latter ought to give its own stand thereto.
APPENDIX I

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