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WORLD MARITIME UNIVERSITY  
Malmö, Sweden

**A STUDY OF FLAG STATE PERFORMANCE OF  
THE MARITIME INDUSTRY AUTHORITY  
(MARINA) AS THE FLAG ADMINISTRATION OF  
THE PHILIPPINES**

By

**JEFFREY ALAMA BANGSA**  
Republic of the Philippines

A dissertation submitted to the World Maritime University in partial fulfillment  
of the requirements for the reward of the degree of

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

**(MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION)**

**2021**

## DECLARATION

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

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

Signature:



Date:

21 September 2021

Supervised by:

Anish Arvind Hebbar

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NB The supervisor's signature is not required.

## ACKNOWLEDGEMENT



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## ABSTRACT

Title of Dissertation: **A Study of the Flag State Performance of the Maritime Industry Authority as the Flag Administration of the Philippines**

**Degree: Master of Science**

The ultimate objective of the Flag State Administration is to ensure the ship's compliance to maritime safety in order to safeguard the lives and properties at sea and to protect the marine environment. Every Maritime Administration can achieve this by effectively discharging its flag state's duties as obliged by the United Nations Conventions on the Law of the Sea (UNCLOS) and complying with the requirements set by the Implementation of the International Maritime Organization Instruments (III Code) among other instruments.

As a Flag State and an IMO Member-State, the Philippines established the Maritime Industry Authority (MARINA) to be its Flag State Administration. Among the critical flag-State duties of the MARINA is the ratification of IMO instruments and its legislation into national laws. The other equally important duties are the maintenance of the registry of ships, ships' surveys and the issuance of related certificates, implementation and enforcement of maritime safety regulations, accreditation of Recognized Organizations, and the conduct of marine casualty investigations in case of accidents involving Philippine-Registered Ships and Filipino Seafarers.

This research used the qualitative method and adapted the modified Flag State Self-Assessment Form and the EMSA Gap Analysis Project Questionnaire. Participants from the Philippines, Republic of Korea, and Japan maritime administration were requested to populate this form. Additional research questionnaires were formulated and distributed to key persons in the MARINA, shipping companies, RO, and other maritime professions to maximize information collection. Because of the pandemic period, limited face-to-face interviews were safely conducted following health protocol on social distancing, and one focus group discussion via zoom application was completed. In studying the Flag State performance of the MARINA as the Flag Administration of the Philippines, the actual functions of MARINA were analyzed and compared with the Flag State duties as mandated by the UNCLOS. Relevant findings were also assessed using the standards of the III Code. This research highlights the flag state duties and responsibilities related to implementing and enforcing the maritime safety instruments carried out by the MARINA.

The study has shown that the MARINA has generally been making significant progress on meeting the standards set by the III Code except for the lack of personnel for performing the technical tasks, particularly the surveyors. This issue merits concern because surveyors' roles are critical in the survey and certification of ships and the maintenance of the registry of ships.

**KEYWORDS:** Flag State, Flag State Duties, Flag State Performance, the Philippines Maritime Administration.

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## LIST OF ABBREVIATIONS

3S	Ship Survey System Manual
BARMM	Bangsamoro Autonomous Region in Muslim Mindanao
BMARINA	Bangsamoro Autonomous Region Maritime Industry Authority
CHED	Commission on Higher Education (CHED)
CO	Central Office
COLREGS	International Regulations for Preventing Collisions at Sea
DA	Department of Agriculture
DENR	Department of Environment and Natural Resources
DFA	Department of Foreign Affairs
DICT	Department of Information and Communication Technology
DND	Department of National Defense
DO	Department Order
DOLE	Department of Labor and Employment
DOST	Department of Science and Technology
DOTr	Department of Transportation
EO	Executive Order
ES	Enforcement Service
FOC	Flag of Convenience
FSI	Flag State Inspection
GISIS	Global Integrated Shipping Information System
GT	Gross Tonnage
ICCRIMC	Inter-Agency Coordinating Committee on the Ratification and Implementation of Maritime Conventions
III Code	Implementation of International Maritime Organization Instruments
ILO	International Labour Organization
IMO	International Maritime Organization
IMO CIC	International Maritime Organization Casualty Investigation Code
IMSAS	International Maritime Organization Member State Audit
LL	International Convention for Load Lines
MAIFA	Maritime Accident Investigators Forum in Asia
MAIIF	Maritime Accident Investigators International Forum
MARINA	Maritime Industry Authority
MARPOL	International Convention for the Prevention of Pollution from Ships
MC	Maritime Industry Authority Circular
MCIS	Maine Casualty Investigation Section
MIDP	Maritime Industry Development Plan
MLC	Maritime Labour Convention
MOA	Memorandum of Agreement
MRO	Maritime Industry Authority Regional Office
MRO I	Maritime Industry Authority Regional Office I
MRO II	Maritime Industry Authority Regional Office II
MRO III	Maritime Industry Authority Regional Office III
MRO IV	Maritime Industry Authority Regional Office IV
MRO IX	Maritime Industry Authority Regional Office IX
MRO NCR	Maritime Industry Authority Regional Office National Capital Region
MRO V	Maritime Industry Authority Regional Office V

MRO VI	Maritime Industry Authority Regional Office VI
MRO VII	Maritime Industry Authority Regional Office VII
MRO VIII	Maritime Industry Authority Regional Office VIII
MRO X	Maritime Industry Authority Regional Office X
MRO XI	Maritime Industry Authority Regional Office XI
MRO XII	Maritime Industry Authority Regional Office XII
MRO XIII	Maritime Industry Authority Regional Office XIII
NAMRIA	National Mapping and Resource Information Authority National
NC	Non-Conformity
NTC	National Telecommunications Commission
OB	Observations
OSS	Overseas Shipping Service
PCG	Philippine Coast Guard
PD	Presidential Decree
PMMRR	Philippine Merchant Marine Rules and Regulations
PPA	Philippine Ports Authority
PSC	Port State Control
RA	Republic Act
RO	Recognized Organization
SID	Seafarer's Identity Document
SOLAS	International Convention for the Safety of Life at Sea
SONAME	Society of Naval Architect and Marine Engineers
SS I	Ship Surveyor I
SS II	Ship Surveyor II
SS III	Ship Surveyor III
SS IV	Ship Surveyor IV
STCW	International Convention on Standards for the Training, Certification and Watchkeeping for Seafarers
TM	International Convention on Tonnage Measurement of Ships
UN	United Nations
UNCCRS	United Nations Conference on Condition for Registration of Ships
UNCLOS	United Nations Conventions on the Law of the Sea
VIMSAS	Voluntary International Maritime Organization Member State Audit Scheme
WMU	World Maritime University

# 1 Introduction

## 1.1 Background of the Study

The Philippines is a Member-State of the International Maritime Organization (IMO). As an IMO Member-State and a party to the United Nations Conventions on the Law of the Sea (UNCLOS), the Philippines has the right to grant nationality to vessels that will fly its flag. To avail of this right, a vessel has to register with the Philippine Flag Administration. The Flag Administration of the Philippines is the Maritime Industry Authority (MARINA). As the Flag Administration, the MARINA prescribes rules and regulations that duly conform with the IMO instruments and subsequently cause its effective implementation and enforcement. The vessel's registration requires initial surveys to ensure that it is designed, constructed, and equipped in accordance with the minimum safety standards. It is further required that the vessels be manned and operated by license and competent master, officers, and crew. The right to grant nationality to vessels flying their flag comes with obligations to perform flag states' duties. These duties are provided by Article 94 of the United Nations Conventions on the Law of the Sea (UNCLOS), also known as the Law of the Sea Convention. The UNCLOS is an international treaty that provides a legal framework binding upon all Member-States who are parties to the convention. As a party to the convention, the Philippines, through the Maritime Industry Authority (MARINA), is duty-bound to comply with all the duties mandated by the UNCLOS. In general, every flag State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag" (UNCLOS, 1982). In complying with these duties, the flag States are guided by the International laws and IMO through the various instruments that function within the framework of the United Nations. Article 4 of the United Nations Conference on Condition for Registration of Ships (UNCCRS) further provides every State with the rights to grant nationality to the ships entitled to fly their flag and sail the high seas bearing its flag. (United Nations, 1986). As provided by the UNCLOS and the UNCCRS, the duties and right are equally applicable to all member states.

The Maritime Administration or most often referred to as the Flag State Administration, is a government body of each member state responsible for regulating the maritime safety of all vessels registered under its flag. In most cases, the Maritime Administration is primarily responsible for creating a legal framework that serves as governing rules and regulations of the shipping industry. As a Flag State Administration of the Philippines, the Maritime Industry Authority ensures that all ships flying the Philippine Flag comply with the international maritime conventions that the country is a party to. These conventions include the International Convention for Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), International Convention for Load Lines (LL), the International Regulations for Preventing Collision at Sea (COLREG), the International Convention on Tonnage Measurement of Ships (TM) and the Standard of Training, Certification, and Watchkeeping for Seafarers (STCW). The compliance with these international instruments is particularly true for all vessels registered under the Philippine flag engaged in international trade and those classified as convention-size vessels (500 GT and above). For Philippine Registered Vessels engaged in domestic trade, the Philippine Merchant Marine Rules and Regulation, 1997 (PMMRR) and other existing national laws and regulations are in place to regulate the domestic shipping industry. Similarly, these national laws are implemented and enforced to ensure the safe operation of ships, the safety of life and properties at sea, and the protection of the marine environment within the jurisdiction of Philippine water.

## **1.2 Problem Statement**

In 2009, the Philippines was subjected to the Voluntary IMO Member State Audit Scheme (VIMSAS). The said audit revealed that the State had not formulated a maritime strategy to meet its overall obligations and responsibilities as recommended by the III Code to which it is a party to. At that time, the Philippines was not yet a party to the SOLAS Protocol 1978, the SOLAS protocol of 1988, the LL Protocol of 1988, and the COLREG 1972. On the MARINA as the Flag Administration, the audits found five non-conformities (NC), and four observations (OB) were noted. (*See Annex 1*). While there was no finding on how marine casualty investigations were carried out, it was reported that the MARINA, as the Flag Administration, performs the duties to

examine and investigate cases of marine accidents involving Philippine Flag Vessels. Marine investigation for maritime accidents that took place outside of the Philippines was never mentioned. Also, during that time, there was already pending legislation for creating a Maritime Transport Safety Board supposedly designed to undertake the duties as recommended by the IMO Casualty Investigation Code.

Shipping operations have always been viewed as international. Vessels engaged in commercial trades mostly travel from one country to another. To ensure the smooth operations of vessels engaged in maritime trades, international regulations were formulated to set the minimum safety standards that are generally accepted by the member states. These safety regulations are designed to safeguard the lives and properties at sea, including the ships, the people on board, and the properties being transported. For these reasons, every vessel that sets out to the sea must always be fit for sea service. This can only be assured if every vessel engaged in commercial trade was designed, constructed, equipped, manned, and operated following the minimum safety regulations as mandated by the IMO and other international conventions. Hence, every member state must perform its flag states' duties as prescribed by the international instruments and the national laws that conform to the minimum safety standards. In the Philippines, the IMO instruments are generally complied with by vessels engaged in international trade. In case of the vessels engaged in domestic trade, convention size vessels are also required to comply with the IMO instruments but with significant challenges.

### **1.3 Objectives and Research Questions**

This research aims to study the performance of the MARINA as the flag administration of the Philippines as provided by the Implementation of IMO Instruments (III Code) on Flag States' responsibilities. It aims to address three key questions related to the implementation of maritime safety instruments.

- What are the flag state functions of the MARINA as the Flag Administration of the Philippines as mandated by the III Code?
- How has the MARINA been performing its Flag State's Obligations on implementing maritime safety regulations?

- What are the best practices employed by the Flag Administrations in the region such as South Korea and Japan, and how could the strategy for effective implementation and enforcement of IMO instruments of the Philippines benefit from these best practices to enhance its flag state performance?

#### **1.4 Research Method**

This research uses a qualitative method through the aid Flag State Performance Self-Assessment Form as provided under the IMO Resolution A912(22) and the EMSA Gap Analysis Project Questionnaires. These forms were partly modified and adapted to suit the objectives and scope of the research. Using these modified forms, key personalities from the maritime administrations of the Philippines have been invited to assist in populating the questionnaire. A similar set of research questionnaires were also formulated to generate more input from the four clusters of participants: The Maritime Industry Authority (MARINA), the Recognized Organizations (RO), the Shipping Companies, and the other maritime professionals with relevant experience in the management of maritime affairs. In addition, desktop research focus on pertinent records of MARINA has been subjected to document analysis to get meaningful information related to the flag state performance of the MARINA. The information collected has been assessed using the standard of III Code Annex Parts 1 and 2 or the Common Area and the Flag State, respectively.

#### **1.5 Scopes and Limitations**

Due to the multi-agencies involved in the performance of Flag State duties in the Philippines, this research will only be assessing the Flag State obligations performed by the MARINA, as the Flag Administration of the Philippines. It is further limited to the provisions of the III Code on Flag States' responsibilities related to the implementation of maritime safety instruments that the MARINA carries out, particularly on the International Convention for Safety of Life at Sea (SOLAS), International Convention for Load Lines (LL), the International Regulations for Preventing Collision at Sea (COLREG) and the International Convention on Tonnage Measurement of Ships (TM). While the MARINA generally regulates matters related to STCW, it has a separate office task to manage the regulations. In the case of

MARPOL instruments, its implementation in the Philippines is carried out by the Philippine Coast Guard. Hence, the implementation of the instruments of STCW and MARPOL will not be part of this research.

## **1.6 Summary of the Research**

This research is composed of 5 Chapters. Chapter 1 deals with the introduction to include the background of the study. Chapter 2 deals with the review of available literature related to flag state duties as mandated by the UNCLOS and the guidelines set by the III Code on implementing IMO maritime safety Instruments. Chapter 3 deals with the overview of the Philippine Maritime Administration and the Maritime Industry Authority (MARINA) as the Flag Administration of the Philippines. Chapter 4 deals with the research methodology, which uses qualitative methods. Chapter 5 deals with interview and desktop research results and the relevant discussion on how the MARINA performs its flag state duties as mandated by the UNCLOS and the III Code. Finally, Chapter 6 deals with the conclusion and recommendations, which deals with the relevant findings of how the MARINA is performing its flag state duties and how it can improve its performance.

## 2 Literature Review

### 2.1 Flag State

As cited by (Mansell,2009) “There are a number of definitions of “flag State”: “the State which has granted to a ship the right to sail under its flag” (Churchill and Lowe 1999, p. 208); “the State whose nationality the ship possesses” (Akehurst 1988, p. 182); “a State whose flag a ship flies and is entitled to fly” (Convention on Conditions for the Registration of Ships 1986, Article 2); “the State in whose territory a ship is registered” (LOSC Article 91(1)).” Other literature provides that a flag state is a country in which a ship is registered or licensed, whose flag the ship flies, and the ship's laws and maritime regulations are bound and controlled. ((Oxford University Press (OUP), n.d.); A flag state is the location of where a commercial ship is registered or licensed with. (*Flag States | Maritime Industry Knowledge Center*, n.d.). By these definitions, a flag state is a country vested with the right to grant nationality to ships flying its flag and with the obligations to perform the duties and responsibilities to ensure that its ships comply with the regulations provided by the IMO instruments. These regulations include the process of vessel registration that involves detailed statutory certifications and other services to ensure that the vessel subject for registration is fit for sea service. In complying with its obligations, a Flag State must establish a maritime administration to perform the duties and responsibilities embodied in the UNCLOS and the IMO instruments. The common names of the agencies responsible for carrying out flag state obligations are Maritime Safety Administration, Maritime Administration, and Maritime Authority. In the case of the Philippines, it is named the Maritime Industry Authority (MARINA). It is worthy to note that while IMO tried to harmonized and standardized the maritime safety regulations, it has not come up with a strong regulation that recommends a standard name for the Maritime Administration and the appropriate agency that should function as such. For these reasons, the Flag State functions are carried out by the Coast Guard or the Navy in some countries.

### 2.2 Flag State Duties

The United Nations Convention on the Law of the Sea (UNCLOS) provides for the general and specific duties of every Member-State. In general principle, Article 94, paragraph 1 of the UNCLOS mandates every State with the duty to effectively



exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag. (UNCLOS, 1982). Subsequent paragraphs of the Article require every State to perform particular duties related to the maintenance of vessel registry to include all the relevant activities prior to the issuance of the certificate of registration, such as the conduct of ship survey and inspections to determine that the ship to be registered are constructed, equipped with minimum safety navigation devices, to be manned and operated by qualified and certified seafarers, and the issuance of related safety certificates to authorize the ship to operate legally. Further, the Article explicitly requires every State to enforce its national law within its jurisdictions; to conduct investigations and inquiry related to marine accidents; and to ensure that its national laws and processes are conforming with the regulations, procedures, and practices that are generally aligned with the international standards that are accepted by the other member states. Lastly, the UNCLOS mandates every member state to comply with the requirements to report to the IMO. In his dissertation, Manoni stated that “the law that regulates the ‘general duties’ of flag States is customary international law, now firmly codified and elaborated in a number of international instruments. These instruments include the United Nations Convention on the Law of the Sea, 1982 (1982 LOSC1), the International Maritime Organization (IMO) conventions, and the various maritime labour-related conventions and protocols of the International Labour Organization (ILO).” (Manoni, F.M. 2012). In an article published in the Journal of Safety Science and Resilience, the authors mentioned that “the basic structure of flag State duties and responsibilities flows from the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), more specifically from Articles 94 and 217, and maybe divided into three categories – administrative, social and technical.” (Hebbar, Anish Arvind; Geymonat, Santiago Juan, 2021). Based on the literature, the Flag states duties are categorized into administrative, technical and social.

### **2.2.1 Flag State Administrative Duties**

“Flag States bear the fundamental administrative duty to ratify instruments and give full and complete effect to international treaties as per UNCLOS, as well as IMO instruments such as SOLAS. Mandatory reporting to IMO is yet another quintessential administrative obligation and concerns prevention of marine pollution from ships,

casualty investigations, flag State authorisation to the RO, and standards of training, certification and watch-keeping, besides safeguards in respect of the crews.” (Hebbar, A. A. and Geymonat, S. J., 2021). The Administrative duties of the flag states refer to the ratification of IMO conventions and the legislation of national law to implement the same. It also involves maintaining vessel registry and the issuance of certificates and other regulatory functions such as the accreditation of shipping companies and Recognize Organizations. It also involves regulatory functions related to fees and charges. The technical duties refer to Flag State's duties to ensure that all ships flying its flag are safely designed, constructed, equipped, manned, and operated following the minimum safety regulations that conform to the generally accepted international rules, procedures and practices. It involves the inspections, surveys, and audits of ships, shipping companies and RO. “The flag State may elect to exercise its duty and carry out technical administration, such as surveys and flag State inspections and audits, itself or it may elect to entrust some or all of these duties to Recognized Organizations (ROs) as allowed by IMO instruments.” (Mansell, 2009).

### **2.2.2 Flag State Technical Duties**

“The technical duties of flag States encompass the construction, equipment and seaworthiness, safe manning and training of crews, use of signals, maintenance of communications, prevention of collision, and prevention, reduction and control of marine pollution. (UNCLOS Article 94)” as cited by (Hebbar, A.A. and Geymonat, S. J., 2021). “These technical duties primarily involve matters of inspection and survey to verify that the ship meets construction, equipment, and seaworthiness standards.” (Mansell, 2009). In the context of the MARINA, technical duties related to the vessels engaged in domestic trade are performed by its technical personnel. In contrast, vessels engaged in international trade are delegated to the RO. The Technical personnel herein referred to are the inspectors, surveyors, and auditors duly qualified and professionally certified. In most cases, these technical personnel are usually licensed Masters, Chief Engineers, and Naval Architects who have gained relevant experiences in shipping and have undergone additional training to enhance their competencies. In some cases, other related professionals, particularly in the engineering field such as Civil, Mechanical, and Electrical Engineers, have been hired and further trained to gain the required proficiency and competence. For these

reasons, it is preferable for the inspectors, surveyors, and auditors to have shipping management and operation background.

### **2.2.3 Flag State Social Duties**

The social duties of Flag States include the ratification of ILO maritime labour standards. “Flag States have social duties concerning the manning of ships, labour conditions and training of crews under UNCLOS Article 94 as well as crew safety standards, social security measures and shipboard conditions of employment and living arrangements under the ILO Maritime Labour Convention, 2006.” (Hebbar, A. A. and Geymonat, S. J., 2021). In performing these duties, Flag State Administration prescribes the labor contract of seafarers onboard to include wellness and health insurance and the appropriate working and living conditions on board the ships.

### **2.3 The Implementation of IMO Instruments (III Code)**

The III Code sets its clear objectives to enhance the global safety and protection of the marine environment and assist member states in implementing the instruments of the organization. (III Code, 2013). These objectives also clarified that the Code requires member states to implement IMO instruments to which they are parties. At the minimum, III Code sets guidance on implementing the IMO mandatory instruments, particularly the SOLAS, MARPOL, STCW, LL, Tonnage, and COLREGS. The effective implementation of these instruments is the primary measure of flag state performance. To pursue this mandate, the IMO provided member states with guidelines and mechanisms through the III Code, which recommends formulating a maritime strategy that will suitably work and address the implementation of the mandatory IMO instrument within the context of every maritime nation.

### **2.4 Presidential Decree 474**

In 1974, the Maritime Industry Authority was established by virtue of Presidential Decree 474, otherwise known as the Maritime Industry Decree of 1974. It was created as an office under the Office of the President, supposed to give it a strong position in performing its tasks. Among its objectives are to adopt and implement a practicable and coordinated Maritime Industry Development Program which shall 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 reservoir of trained manpower. (PD 474). These objectives were not specifically designed to regulate maritime safety but rather to formulate the Maritime Industry Development Program (MIDP). By definition, "Maritime Industry, in the broadest concept of the term, refers to all enterprises engaged in the business of designing, constructing, manufacturing, acquiring, operating, supplying, repairing and/or maintaining vessels, or component parts thereof; of managing and/or operating shipping lines, stevedoring, arrastre and customs brokerage services, shipyards, drydocks, marine railways, marine repair shops, shipping and freight forwarding agencies and similar enterprises." (PD 474). The definition provided may seem to be accurate when referring to the term Maritime Industry.

Nevertheless, for an agency that was created in 1974 whose functions were based on the same year, it is no longer accurate to refer to it as the Authority because, at present, the Maritime Industry Authority is now limited to the Administration of the maritime safety and the protection of the marine environment. Other maritime industries such as stevedoring, arrastre, custom brokerage services, marine railways, freight forwarding are no longer covered by the current functions of the MARINA. Hence, the provisions under Section 4 of this Decree that state that "the Authority shall have general jurisdiction and control over all persons, corporations, firms or entities in the maritime industry of the Philippines and shall supervise, regulate in accordance with this Decree," is no longer applicable.

## **2.5 Executive Order Number 125a**

To align the structure and functions of the MARINA and other agencies under the Department of Transportation and Communication (DOTC), later renamed as the Department of Transportation (DOTr), EO 125 was approved but was immediately amended by EO 125a. This development caused the transfer of the MARINA to the Department of Transportation, which proved to be aligned with most agencies that regulate maritime transportation. During this period, the MARINA started transforming from mere policy formulation into Flag State administration, whose primary functions

are to manage vessel registrations and the related statutory certifications and other services and the issuance of licenses and identity documents of Filipino seafarers.

## **2.6 Philippine Merchant Marine Rules and Regulations of 1997**

As the IMO instruments continue to set international standards where member states may draw their national law and its implementation, the MARINA as the Flag Administration revised the PMMRR 1976 into PMMRR 1997. The revised regulations codified and integrated relevant IMO instruments to cause its adaption and implementation in the Philippines and mandated all Philippine-Registered Ships to comply. The PMMRR 1997 makes direct reference to the mandatory IMO instruments. To this date, it serves as the primary book that regulates shipping in the country.

## **2.7 International Maritime Organization (IMO) Maritime Safety Circular (MSC) No. 349 (92) on Code for Recognized Organizations I (RO Code).**

In view of the limitations of some Member-States to perform ship surveys of their ships trading outside their territories, the RO Code provides regulations for the delegations of authority between the Member-States and their Accredited RO. Section V of the MARINA Circular No. 2018-01 states that “the RO shall be authorized, through a Memorandum of Agreement (MOA), to carry out the statutory certification and services, under mandatory IMO and ILO instruments and national legislation, rules and regulations, to Philippine shipping companies and their Philippine-registered ships, of applicable size and type, engaged or shall engage in international voyages including those in the domestic trade.” This provision allowed RO to perform statutory certification to Philippine domestic ships, but only a few ship owners can afford it due to the high service cost. As part of the oversight functions of the MARINA over the RO, MARINA Circular No. MS 2020-02 under Section 5 paragraph 4 states that “the Flag State inspection and audit of Philippine Registered Ships and the audit of RO shall be guided by the procedure established by the administration.”. In cases where the MARINA finds a reasonable ground to inspect the Philippine Registered ships, Flag State Officers are authorized to conduct surveys, inspections, and audits, which shall include verification of the statutory certificates issued by the RO, and can further issue suspension or withdrawal of the same certificates.

### **3 Maritime Administration**

The Maritime Administration, most often referred to as the Flag State Administration, is a government body of each member state responsible for regulating the maritime safety of all vessels registered under its flag. As (Mansell, 2009) pointed out, “the maritime administration should have the ability and resources to register and administer the ships flying its flag on a worldwide basis, and to monitor organisations to which it has delegated statutory responsibilities effectively.” Following this principle, the MARINA draws its Authority from the Presidential Decree No. 474 as approved in 1974, while its roles and functions as the Flag Administration of the Philippines is drawn from the Executive Order 125a, which was approved in 1987 but were only formally assumed in 1994 through the Memorandum Circular No. 88. In complying with its duties as the Flag Administration of the Philippines, the MARINA, as part of the Philippine Maritime Administration, actively develops and proposes plans and programs to include the country’s effort in ratifying IMO instruments and other international maritime conventions. The MARINA is also actively involved in the formulations of the first Philippine Maritime Strategy.

#### **3.1 The Philippine Maritime Administration**

The Philippines is among the fifty-one (51) countries that created the United Nations in 1945. Since then, the country has been supportive of the UN programs, including implementing the international treaty and obligations to which it is a party. The Philippine membership in the IMO began in 1964 through its acceptance of the IMO Convention. Consistent with its obligation as a contracting government, the Philippines continues to ratify relevant IMO conventions and promulgated national laws and regulations designed to implement and enforce maritime safety and marine environment protection within its territorial jurisdiction and in the international water where the Philippine Registered Vessels are trading.



Figure 3-1 Shows the status of the list of treaties ratified by the Philippines as of 2021. According to the IMO website (IMO, n.d.-b), the Philippines have ratified twenty-nine (29) out of the fifty-nine (59) IMO conventions. Among the conventions ratified includes the SOLAS, MARPOL, STCW, Load Lines, Tonnage Measurement, and COLREGS which are part of the IMO mandatory instruments covered by the III Code. While the Philippines were facing challenges in ratifying conventions in the past years, it has realized the significance and advantages of being parties to the IMO conventions. Because of the fragmented nature of agencies involved and responsible for implementing relevant conventions, its ratification was often overlooked, leading to its significant delay. To address this issue, the Philippines established the Inter-Agency Coordinating Committee on the Ratification and Implementation of Maritime Conventions (ICCRIMC) to provide policy directions, technical guidance and ensure a systematic and integrated approach to the ratification and implementation of priority IMO Instruments. The ICCRIMC is in charge of monitoring developments and deciding whether to ratify a new international maritime convention. This entails understanding the Convention's requirements and the measures required to meet those requirements through research, development, testing, monitoring, and collaboration with other agencies such as DOST, DENR, and DOE. (*Philippine Maritime Strategy on the Implementation and Enforcement of Relevant IMO Instruments 2020–2024*, 2020).

Among the regulations pertaining to the implementation of IMO instruments in the Philippines are the PMMRR 1997 and the various Memorandum Circulars that contain regulations and their implementations. The PMMRR 1997 is a revision of the PMMRR 1976, which used to be implemented by the Philippine Coast Guard. The new version has integrated the provisions of the IMO instruments on SOLAS, Load Lines, Tonnage Measurement, STCW, MARPOL, and the ILO Maritime Labour Conventions as ratified by the Philippines. “The Revision Committee considered the IMO Model Code, relevant national laws, rules and regulations, SOLAS 1974, as amended, Load Lines, Tonnages, STCW and ILO Convention, among other conventions.” (PMMRR, 1997).



Table 3-1 Time to Implementation of Treaty

Ratification of Treaties/Philippines				
Treaty	Types of Ratification	Date of treaty entry into force	Date of entry into the country	Time to implementation
IMO CONVENTION	Acceptance	17/03/1958	09/11/1964	5y and 4m
IMO AMEND-91	Acceptance	07/12/2008	07/12/2008	0
IMO AMEND-93	Acceptance	07/11/2002	07/11/2002	0
AFS 2001	Accession	17/09/2008	06/09/2018	10y
BWM 2004	Accession	08/09/2017	06/09/2018	1y
CLC PROT 1992	Accession	30/05/1996	07/07/1998	2y & 2m
COLREG 1972	Accession	15/07/1977	10/06/2013	36y & 11m
FUND PROT 1992	Accession	30/05/1996	07/07/1998	2y & 2m
IMSO C 1976	Accession	16/07/1979	30/03/1981	1y & 8m
INMARSAT OA 1976	Signature	16/07/1979	30/03/1981	2y & 8m
LC 1972	Approval	30/08/1975	30/08/1975	0
LC PROT 1996	Accession	24/03/2006	08/06/2012	6y & 2m
LL 1966	Acceptance	21/07/1968	04/06/1969	11 months
LL PROT 1988	Accession	03/02/2000	24/07/2018	18y & 5m
MARPOL 73/78 ANNEX I & II	Accession	02/10/1983	15/09/2001	17y & 11m
MARPOL 73/78 ANNEX III	Acceptance	01/07/1992	15/09/2001	9y & 2m
MARPOL 73/78 ANNEX IV	Acceptance	27/09/2003	27/09/2003	0
MARPOL 73/78 ANNEX V	Acceptance	31/12/1988	15/09/2001	2y & 9m
MARPOL PROT 97 (ANNEX VI)	Accession	19/05/2005	24/07/2018	15y & 2m
OPRC 1990	Ratification	13/05/1995	06/05/2014	19 y
SOLAS 1974	Accession	25/05/1980	15/03/1982	1y & 10m
SOLAS PROT 1978	Accession	01/05/1981	24/07/2018	37y & 2m
SOLAS PROT 1988	Accession	03/02/2000	06/09/2018	18y & 7m
STCW 1978	Accession	28/04/1984	22/05/1984	24 days
STP 1971	Accession	02/01/1974	02/01/1974	0
SUA 1988	Accession	01/03/1992	05/04/2004	12y & 1m
SUA PROT 1988	Accession	01/03/1992	05/04/2004	13y & 1m
TONNAGE	Acceptance	10/07/1982	18/07/1982	8 days

Table 3-1 shows the current list of conventions ratified by the Philippines through various types of adaption. Also shown is the time it took the Philippines to implement the conventions into the country. It can be noticed that 17 out of the 29 treaties were ratified through accession because most of the subject treaties under negotiations have already been signed by other member states and have already entered into

force. Accordingly, the delay in the ratification is due to the fragmented nature of the agencies involved in implementing the IMO conventions. Other conventions were adapted through acceptance and approval. In adapting a convention, member states may express their consent to be bound to a treaty by signature<sup>1</sup>, ratification<sup>2</sup>, acceptance<sup>3</sup>, approval, and accession<sup>4</sup>. It also noted that the date of entry into force and the date of entry into the country of the conventions that were acceded took a longer time. This is a manifestation that the Philippines was facing some degree of challenges in the ratification of relevant IMO instruments. *(See Annex 2 for the Flow Chart of the Philippine Ratification and Implementation Procedure)*

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<sup>1</sup> Consent may be expressed by signature where:

- the treaty provides that signature shall have that effect
- it is otherwise established that the negotiating States were agreed that signature should have that effect
- the intention of the State to give that effect to signature appears from the full powers of its representatives or was expressed during the negotiations  
(Vienna Convention on the Law of Treaties, 1969, Article 12.1). (*UNTC*, n.d.).

A State may also sign a treaty "subject to ratification, acceptance or approval". In such a situation, signature does not signify the consent of a State to be bound by the treaty, although it does oblige the State to refrain from acts which would defeat the object and purpose of the treaty until such time as it has made its intention clear not to become a party to the treaty (Vienna Convention on the Law of Treaties, Article 18(a)). (*UNTC*, n.d.).

<sup>2</sup> Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

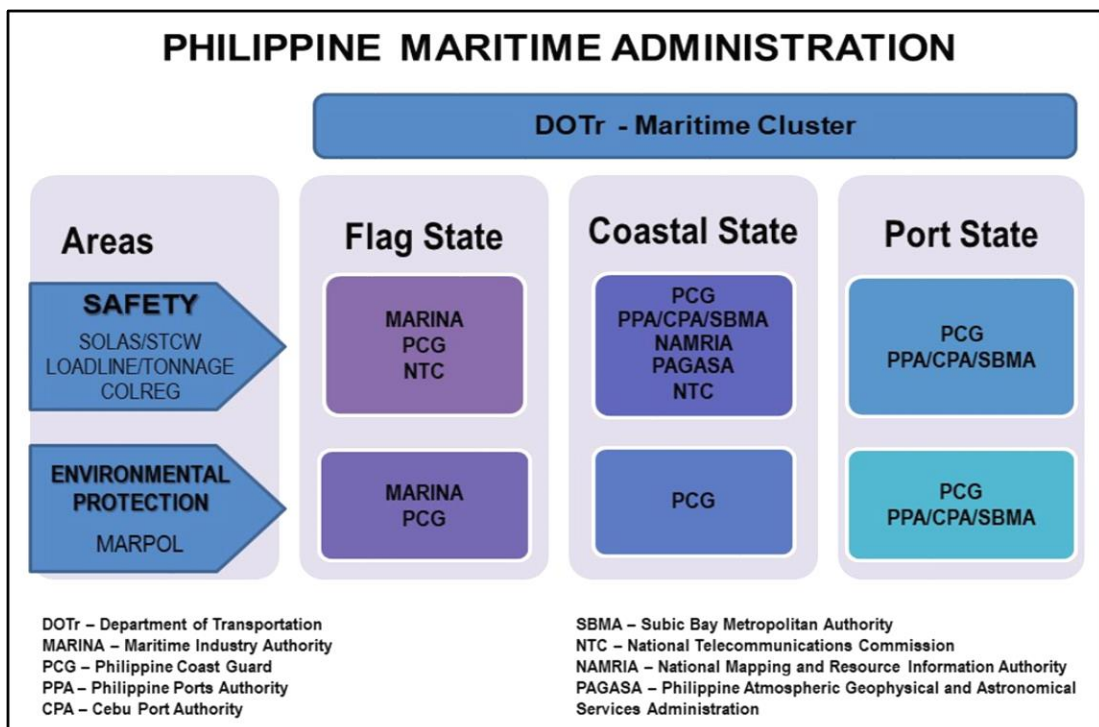
[Arts.2 (1)(b), 14(1) and 16, Vienna Convention on the Law of Treaties 1969]. (*UNTC*, n.d.).

<sup>3</sup> The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969] (*UNTC*, n.d.).

<sup>4</sup> "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question. [Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]. (*UNTC*, n.d.).

In fulfilling its obligation to the United Nations Convention on the Law of the Sea (UNCLOS), the International Maritime Organization (IMO), and the International Labour Organization (ILO), the Philippines organized the Philippine Maritime Administration, which consists of the relevant government bodies who have significant roles in the implementation of the IMO mandatory instruments. These government departments include the Department of Foreign Affairs (DFA), the Department of Information and Communication Technology (DICT), the Department of Environment and Natural Resources (DENR), the Department of Science and Technology (DOST), the Department of National Defense (DND), Department of Agriculture (DA), the Commission on Higher Education (CHED) and the Department of Transportation (DOTr) that has jurisdiction over the three major maritime agencies namely the Philippine Coast Guard (PCG), the Philippine Ports Authority (PPA) and the Maritime Industry Authority (MARINA).



**Figure 3-2.** The Philippine Maritime Administration - Maritime Cluster  
 Source: MARINA Plans and Policy Service

As shown in figure 3-2, the Philippine Maritime Administration relies heavily on the DOTr for the substantial works in the Maritime Cluster. It involves providing strategic

directions to the three maritime agencies performing the Flag State, Port State, and Coastal States obligations. While some flag state functions are also performed by the Philippine Coast Guard (PCG) and the National Telecommunication Center (NTC), most Flag State functions are performed by the MARINA as the Flag Administration of the Flag Administration Philippines. As far as maritime safety is concerned, the PCG assists in enforcing the maritime safety policies of the MARINA while the NTC is in charge of registering the radio communication licenses. All the other safety-related inspections, surveys, audits, and the issuance of related certificates are carried out by the MARINA.

### 3.2 The MARINA Board

Section 6 of PD 474 provides for the powers and duties of the MARINA Board. It includes the power to approve the organizational structure, staffing pattern, and budget of the Authority upon the recommendation of the MARINA Administrator. The Board also serves as the coordinating body that promotes the agenda of the MARINA to the higher authority. All of the MARINA circulars have to be approved by the MARINA Board.



**Figure 3-3.** Composition of the MARINA Board  
Source: MARINA Plans and Policy Service

Figure 3-3 shows the current composition of the MARINA Board. Except for the position of the MARINA Administrator, the Chairperson has now been permanently assigned to the Secretary of the DOTr (formerly the Department of Transportations and Communications (DOTC)). At the same time, the other members are no longer required to be the Heads of the departments and agencies. Notice that the Department of National Defense is no longer a member as the Philippine Coast Guard has taken over its seat. Moreover, to encourage greater participation from stakeholders, particularly in the review of policies, one member from the Society of Naval Architect and Marine Engineers (SONAME) and two others from the private sector representatives have been included as a member of the MARINA Board. One of the primary functions of the MARINA board is the review and approval of policies and regulations. As a standard procedure, the MARINA will formulate policies and subject them to consultations with the maritime stakeholders before presenting them to the MARINA Board for approval.

### **3.3 The Maritime Industry Authority (MARINA)**

On 01 June 1974 or ten years after becoming a member of the IMO, the Philippines established the Maritime Industry Authority (MARINA) through the Maritime Industry Decree of 1974, which provides for the reorganization of the maritime functions in the Philippines and creating the Maritime Industry Authority. (PD 474, 1974). It was initially placed under the office of the President of the Republic of the Philippines to give it full authority and control over all persons, companies, and corporations involved in the country's maritime industry. Its primary functions are to prepare and to conduct an annual review of the Ten-Year Maritime Industry Development Program (MIDP), which integrated all other government programs related to the maritime industry. This MIDP, once approved by the President, shall serve as the mother program requiring all other government instrumentalities to adopt and implement the same and further discouraging other government bodies from executing any policy that is not aligned with the MIDP. PD 474 further provides for the MARINA Board, which was initially composed of the Executive Secretary of the Office of the President, the Secretaries of the Department heads of Industry, Public Works, Transportation and Communication, National Defense, and Chairmen of the Board of Investment, Development Bank of the Philippines, Board of Transportation and the MARINA

Administrator who sits as the Vice Chairman to the Chairman of MARINA Board who is appointed by the President from among the other members. On 31 July 1975, the MARINA was “vested with the exclusive authority over the registration and documentation of Philippine vessels, as well as the issuance of all certificates, licenses or other documents necessary or incident to such registration and documentation.” (PD 761, 1975). On 23 July 1979, the MARINA was transferred from the Office of the President to the Ministry of Transportation and Communication as an attached agency. (EO No. 546, 1979). On 30 January 1987, by virtue of Executive Order 125 as amended by Executive Order 125a, the MARINA was officially designated as the Flag Administration of the Philippines whose primary functions include the following:

1. Register vessels and issue certificates, licenses, or documents necessary or incident thereto;
2. Undertake the safety regulatory functions pertaining to vessel construction and operation, including the determination of manning levels;
3. Undertake the issuance of license to qualified seamen and harbor, bay and river pilots; and,
4. Issue and register the Continuous Discharge Book of Filipino seamen.

However, due to lack of manpower and technical capacities, the complete assumption of the above-stated functions was only exercised on 15 October 1994. (MC No. 88, 1994). During this year, some technical persons from the Philippine Coast Guard, particularly the Naval Architects and Marine Engineers, were also allowed to transfer to the MARINA to form part of the human resources that will perform technical functions related to Flag State responsibilities. Prior to the approval of this Circular, the MARINA was only performing developmental functions related formulation of maritime rules and regulations. In 1997, the MARINA Board approved and caused the implementation of the Philippine Merchant Marine Rules and Regulations (PMMRR, 1997) as a revision of the PMMRR 1976. It now forms parts of the national maritime policies that regulate all Philippine Registered vessels. Accordingly, “Convention-sized ships (500 GT above) shall automatically comply with standards of the SOLAS as supplemented by PMMRR 1997 while the non-convention-sized ships (499 GT and below) shall comply with the PMMRR 1997. (PMMRR, 1997). In 2013 and by virtue of Republic Act No. 10635, entitled An Act establishing the MARINA as the Single Maritime Administration responsible for the implementation and enforcement of the 1978 International Convention on Standards of Training, Certification, and

Watchkeeping for Seafarers, as Amended, and International Agreements or Covenants related thereto, the MARINA assumed the responsibilities over the implementation and enforcement of the STCW Convention. This additional responsibility added more challenging tasks to the MARINA.

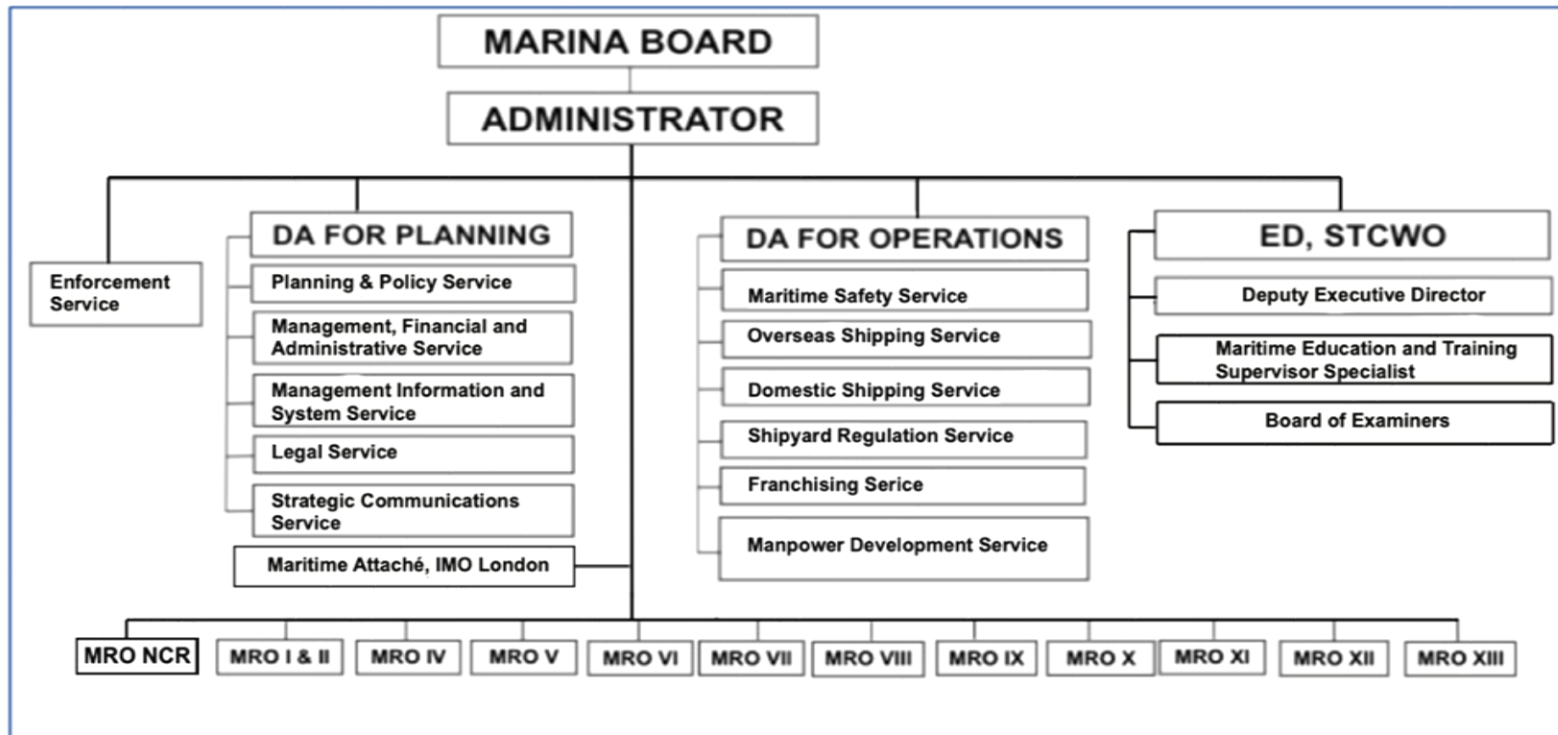
At present, the MARINA as the Flag Administration is fully exercising control and supervision over all Philippine-flagged vessels engaged in commercial trade and all fishing vessels that are above 3GT.

Figure 3-4 shows the overall organizational structure of the MARINA. As earlier discussed, the MARINA is governed by the MARINA Board. It is headed by the Administrator and supported by the two Deputy Administrators, the Executive Directors, and the Deputy Executive Directors of the Standards of Training, Certification and Watchkeeping Office (STCWO). They are all appointed by the President of the Philippines. The MARINA Administrator is usually appointed for six years incumbent to the political term of the President of the Philippines as the appointing authority. There is no law specifying the Administrator's qualification as it is usually considered a trust and confidence position. Hence the President may designate anyone as long as he is a Filipino citizen. Based on the record, only one person who rose from its ranks was appointed as MARINA Administrator. Of the many WMU alumni in the MARINA and in the Philippines in general, only one was appointed as its Administrator. In contrast, there were few officials who rose from the ranks that were appointed as Deputy Administrators.

The central office is divided into three clusters: The Offices of Deputy Administrator for Planning, the Deputy Administrator for Operations, and the STCWO. The offices under the two deputies perform administrative functions related to policy formulations except for the Legal Service, whose primary task is to hear and decide on administrative cases brought before the MARINA.



## ORGANIZATIONAL STRUCTURE



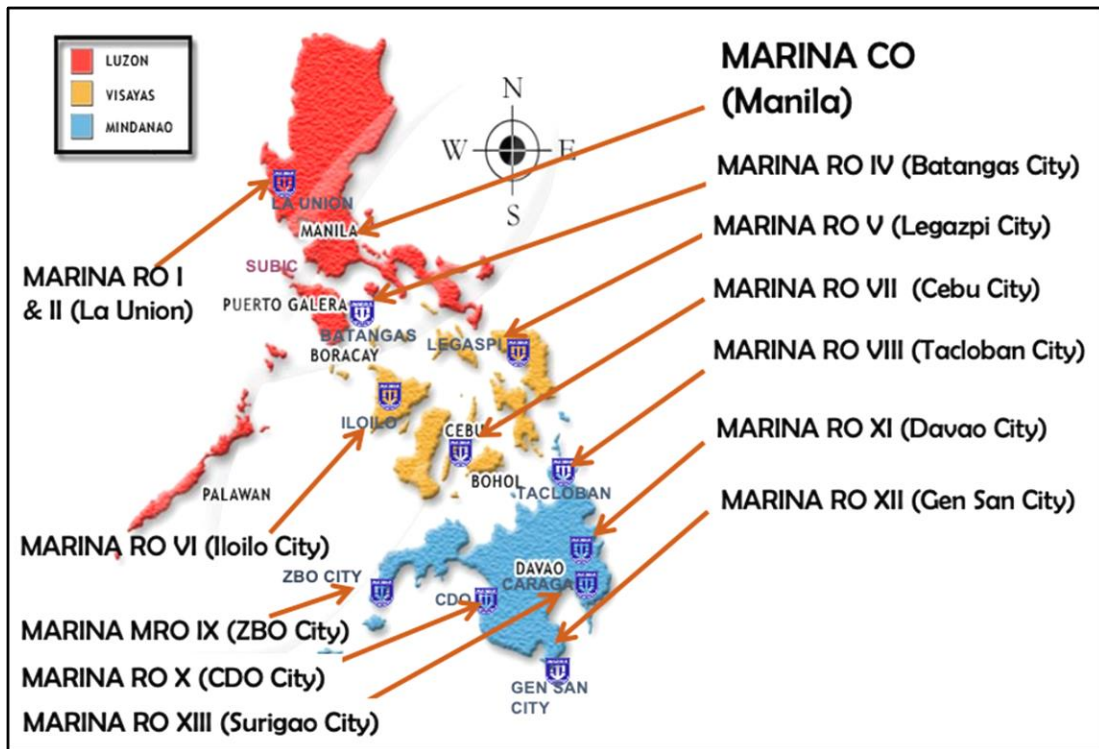
**Figure 3-4.** Organizational Structure of the MARINA  
Source: MARINA Plans and Policy Service



By structure, the MARINA regional offices and the Enforcement Service are directly under the Administrator's office. Prior to the reorganization in 2019, the office of the Administrator usually signs and issues statutory certificates. These tasks were later proven to be impractical considering that it takes too much time of top management and exposes them to unwanted situations. To address these, the MARINA National Capital Region Office was created to perform the tasks previously under the Administrator's office and the operational functions of central offices. The new office is also responsible for maintaining the Ship Registry of vessels engaged in Overseas trade and the domestic ship registry of vessels under its jurisdiction.

Similarly, the other Regional Offices were granted with Delegated Authority to perform statutory certifications and other functions to include the maintenance of Registry of ships operating in domestic trade within their respective jurisdictions. Below the top management are the Directors occupying the different posts in the central offices in Manila and regional offices across the country. Eleven out of the twenty-three of these offices are headed by WMU graduates.

As part of the MARINA's effort to monitor the development in the IMO, it started posting a Maritime Attaché in London in 2015. Its primary functions are to represent the MARINA in various international fora and with the maritime Administration of other states, advise and assist the MARINA on international maritime developments, treaties, and standards, and provide services to Filipino seafarers and Philippine registered ships. With Maritime Attaché in London, the Philippines will always be represented in the IMO Meetings and be apprised of any critical issues that need significant attention. In addition to the participation of the Maritime Attaché in the IMO meetings, key officials from the MARINA are also attending the IMO meetings.

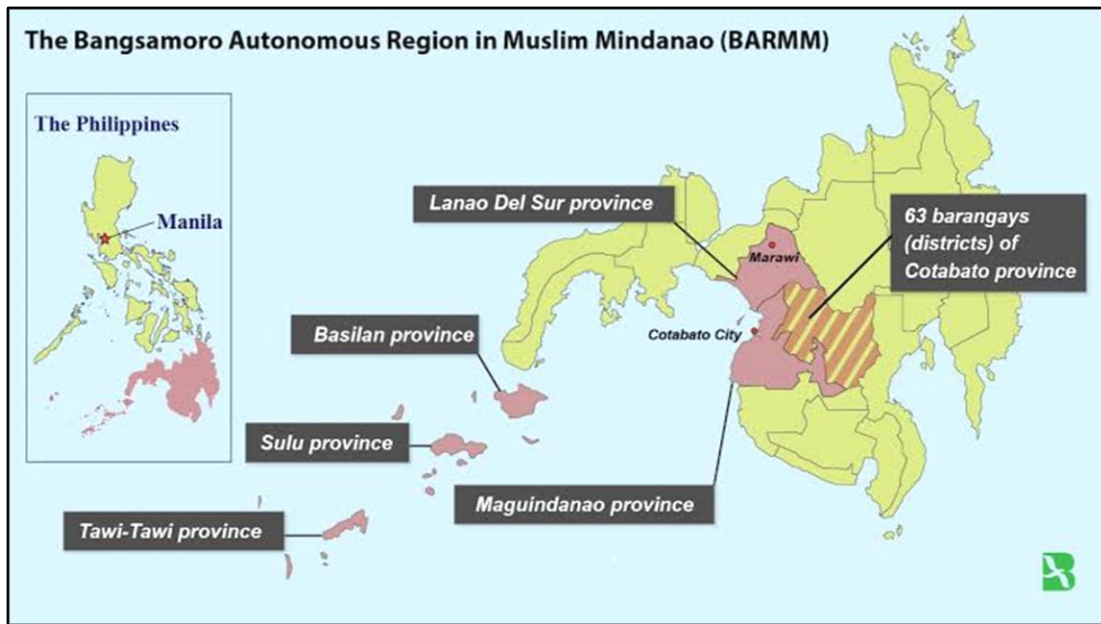


**Figure 3-5.** Geographical Map and Location of the MARINA Central Office & Regional Offices  
 Source: MARINA Plans and Policy Service

Figure 3-5 shows the geographical locations of the MARINA Central Office, which is located in the City of Manila. The Regional Offices are located in the different parts of the country co-located with the regional and political boundaries of the government. Due to the archipelagic nature of the Philippines, some regional offices have set up satellite offices within the respective provinces of the regional jurisdictions.

The map in figure 3-5 does not indicate the existence of another regional office that performs functions of the MARINA due to its autonomous character. This regional office is called the Bangsamoro Autonomous Region Maritime Industry Authority or (BMARINA). This office is under the jurisdiction of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). While it is supposed to adhere to the national law as prescribed by the MARINA, it is currently unable to comply with the technical functions due to its lack of technical capacities. Hence, the maritime policies in this part of the region have yet to be adequately regulated before it can be granted equal recognition of all the maritime licenses and certificates that it issues. In the meantime,

vessels registered in this office are only allowed to trade within its political boundaries. The number of vessels registered with the BMARINA is not reflected correctly in the Registry of Domestic ships maintained by the MARINA. Ideally, BMARINA must submit records of their ship Registry to be incorporated with the Registry of Ships maintained by the MARINA.



**Figure 3-6.** Geographical Map of the BARMM  
Source: The Bangsamoro Autonomous Region in Muslim Mindanao. (n.d.). [Illustration Map]. In *Google Map*.

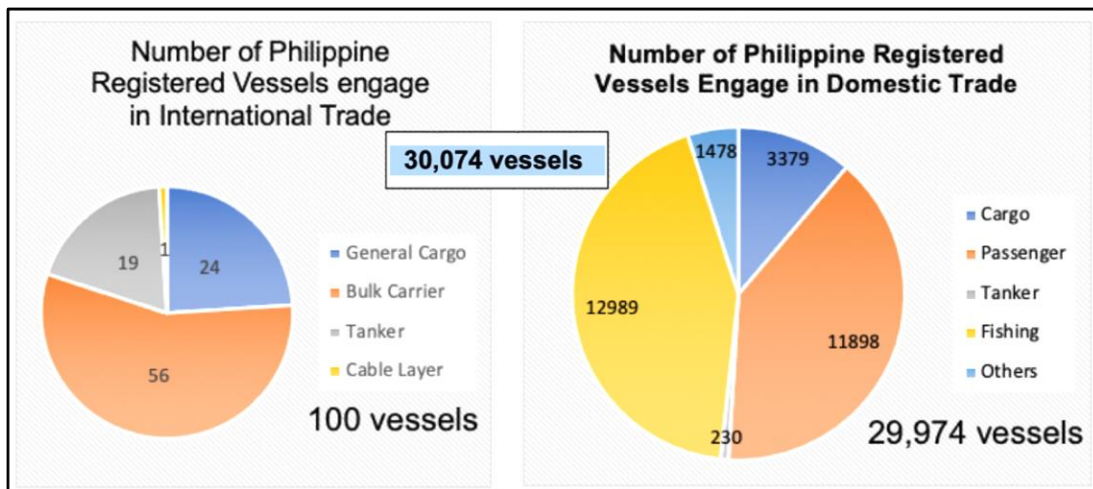
Figure 3-6 shows the provinces under the jurisdiction of the Bangsamoro Autonomous Region. Its archipelagic nature would greatly benefit from a national maritime program, particularly on the national maritime safety policies, to ensure that domestic vessels trading in this area complies with the maritime safety regulations prescribed by the maritime Administration. Previous efforts for the capacity building of its personnel must be revisited to enable the office to perform its functions following the national standard set by the MARINA.



**Figure 3-7.** Mandates of the MARINA  
 Source: MARINA Plans and Policy Service

Figure 3-7 illustrates the overall mandates of the MARINA. As illustrated by four inner circles, the four major mandates of the MARINA are the regulatory functions related to Overseas Shipping, Domestic Shipping, Shipbuilding, and Ship Repair and Human Resources in the maritime industry. The Overseas and Domestic Shipping mandates include the formulation of policies and regulations design to adopt and implement the IMO conventions and national laws and the general process in the registration of vessels. These mandates are aligned with the duty of the flag state as stated in UNCLOS Article 94 paragraph 2, specifying that every State shall maintain a Registry of vessels and assume jurisdiction over ships flying its flag. Hence, the MARINA as the Flag Administration maintains two sets of vessel registries. One set for vessels engaged in international trade, and the other for vessels engaged in domestic trade. Before the vessel's registration, every ship undergoes statutory certifications and services to determine its seaworthiness and the eventual issuance of Authority to engage business or the Certificate of Public Convenience (CPC). For vessels engage in international trade, the MARINA has granted full Authority to ten Recognized Organizations (RO) to perform statutory certification and services to Philippine

Shipping Companies and their Philippine-registered vessels. Such delegation is covered by the Memorandum of Agreement (MOA), which conforms to the mandatory IMO instruments and the ILO Maritime Labour Convention. For vessels engaged in domestic trade, statutory certification and services to Philippine Shipping Companies and their Philippine-registered vessels are carried out by the inspectors, surveyors, and auditors of the MARINA. The third major mandate is shipbuilding and ship repair. It is aligned with the UNCLOS Article 94 paragraphs 3 & 4, which specified that before and after the registration process, each ship must be surveyed and subject to another survey to determine its seaworthiness and readiness for sea. The fourth major mandate is Maritime Human Resources. This is aligned with flag state duties related to the proper training and issuance of licenses of the masters, officers, and crew and the training and certifications of technical personnel who carry out safety inspections, surveys, audits, and marine casualty investigations.



**Figure 3-8.** Number of Philippine Registered Fleet

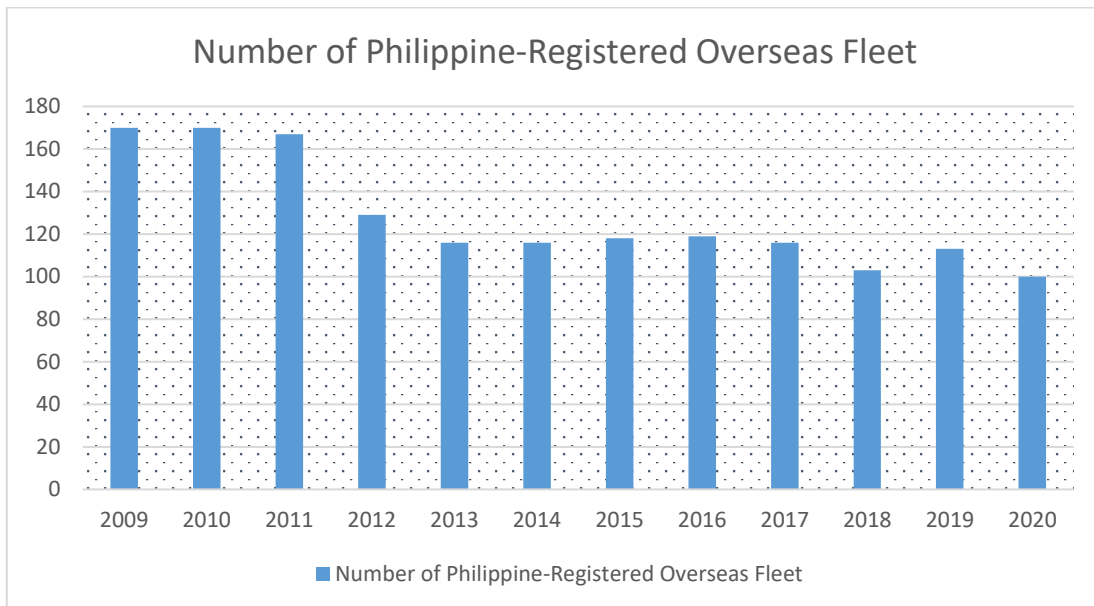
Figure 3-8 shows that as of the end of 2020, the MARINA has granted Philippine nationality to 29,974 vessels engaged in domestic trade and 100 vessels involved in overseas trade. Of this number, only 1,366 are convention size, and the rest are smaller vessels engaged in ferrying passengers and transporting cargoes in inland water. 12,898 of these are fishing vessels, and the other is miscellaneous type watercraft. As a seafarer supplying country, the number of overseas vessels

registered under the Philippine Flag is insufficient to accommodate Filipino seafarers. For this reason, most of the Filipino Seafarers are working onboard vessels of the various flag registries.

The Philippines is a National Registry or sometimes referred to as a Traditional Closed Registry<sup>5</sup>. This type of Registry is solely open to ships owned by persons, shipping companies, or corporations from the same country. In the Philippines, only vessels owned by Philippine nationals or by Philippine companies or corporations are authorized to be registered. At present, the Philippine corporations require at least 60% ownership by Philippine National and 40% maximum foreign ownership. Vessels registered through Bareboat Chartered need to pay Php 4,500,000.00 or roughly USD 100,000.00. In addition, only Filipino seafarers, such as the master, officers, and crew, are allowed to man and operate the vessels.

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<sup>5</sup> A registry that is open only to ships of its own nation is known as a *traditional* or *national registry*. In other words they allow only vessels that are owned by companies or persons that are residents of that country. Traditionally, closed registries have a two-fold requirement, firstly, incorporation in country of registration and secondly, principal place of business in country of registration.



**Figure 3-9.** Number of Philippine-Registered Overseas Fleet

Figure 3-9 shows the number of Philippine-Registered Overseas Fleet, which dropped from 170 ships in 2009 to 100 only in 2020. While there are efforts to strengthen the position of the Philippines in the world fleet, it has yet to come up with favorable incentives that would attract foreign ships owners to register in the Philippines. According to an article published in The Manila Times in 2018, “Stakeholders were calling for legislative reform through the amendment of the Ship Mortgage law, the enactment of a flag registry law that will make the Philippines a “flag of choice” and laws that implement international maritime conventions and instruments ratified by the Philippines. The amendment of a constitutional proscription for foreign interest participation beyond forty percent (40 percent) in the operation of public utilities has also been advocated with no success.” (Pimentel, 2018). To date, there is no legislative reform on the amendment of the ship mortgage law in the same manner that the enactment of a flag registry law is far from being realized. As far as the foreign ownership in the operation of public utilities to include transportation is a concern, there is a significant development through the House Bill No. 78 passed in the lower house, which now allows 100 percent foreign ownership. On September 14, 2021, the Senate of the Philippines or the upper house has unanimously approved Senate Bill 1156, which seeks to amend the Foreign Investments Act of 1991. The amendment of this bill was earlier certified as urgent by President Rodrigo Duterte. It is believed to enhance the investment factors to attract foreign companies to invest in the

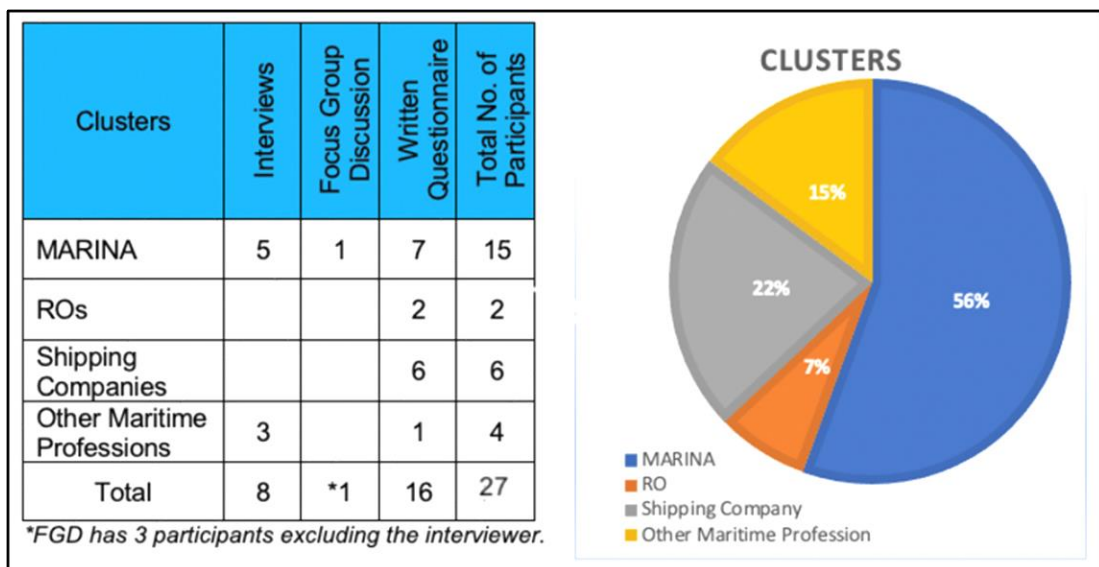
Philippines, including shipping companies and maritime transportations. It now rests upon the President to finally approve the amendment and hope that it will bring positive contributions to the socio-economic development of the Philippines.



## 4 Research Methodology

This research was carried out using the qualitative method using a Research Questionnaire targeting participants from four clusters of the maritime industries such as the maritime Administration (MARINA), Recognized Organizations (RO), Shipping Companies, and other maritime professionals who have relevant experience in the management of maritime affairs. The collected information related to Flag State duties' performance was tabulated into the Flag State Performance Self-Assessment Form as provided under the IMO Resolution A912(22) and the EMSA Gap Analysis Questionnaires. These forms were partly modified and adapted to suit the objectives and scope of the research. Using this form, key personalities from the maritime administrations of the Philippines have been invited to assist in populating the questionnaire. Relevant information gathered has been analyzed with reference to flag state duties as mandated by the UNCLOS and the IMO. As this research focuses on studying the performance of the MARINA as the Flag Administration of the Philippines, only the flag state duties that the MARINA carries out will be subjected to assessment and analysis. Because of the Covid-19 pandemic, the face-to-face interviews followed the minimum health protocol on social distancing. Records of the interview were transcribed, and the same was furnished to the participants for their verification and correction. One focus group discussion was also conducted through the zoom application to maximize elicitation of collective information about how the MARINA performs its flag state functions. Other participants from the MARINA, Shipping Companies, ROs, and other maritime professions were also requested to fill up the written questionnaire. Series of email and phone communications have also been undertaken to maximize the collection of information. In addition to the interviews and written questionnaires, official MARINA reports and records have been subjected to document analysis to determine the compliance of the MARINA to the IMO instruments. In assessing the performance of the MARINA as the Flag Administration of the Philippines, all of the information collected will be analyzed following the standards of the III Code, particularly on the Flag State's duties and responsibilities.

To meet the research objectives, the questions used during the interview and focus group discussion were designed to assess how the MARINA performs its flag states' responsibilities. A total of twenty-seven (27) participants coming from the different maritime clusters were requested to share their views and insights about the Maritime Industry Authority. Some of the participants are former employees of the Administration who are now working as private practitioners related to maritime affairs. The breakdown of the participants is as follows:



**Figure 4-1.** Cluster of Participants

Figure 4-1 sum up the number of research participants. Of the 40 written questionnaires distributed via email, 16 returned with answers corresponding to their clusters. Some messages sent to the registered addresses of the RO and shipping companies failed transmission due to inaccurate email addresses. Follow-up questions were made through email and Viber application communication.

## 5 Results and Discussions

### 5.1 Introduction

This chapter presents the results of the interviews, focus group discussion, and the information gathered through the written questionnaires and desktop research.

Philippine Maritime Administration	Common Areas		Flag State activities							Coastal State activities							Port State activities								
	Strategy	Policy and initial actions (Legislation)	Communication of Information to IMO	Delegation of Authority (Recognized Organizations)	STCW	Flag State Surveyors	Flag State Inspections	Enforcement (Flag State)	Implementation (Coastal State)	Search and Rescue (SAR)	Radio-communication	Aids to Navigation (AtoN)	Hydrographic services	Vessel Traffic Services	Ships Routing	Ship Reporting System	Meteorological Services	Enforcement (Coastal State)	Implementation (Port State)	Port State control (PSC)	Reception Facilities	Registry of Fuel Suppliers	IMO Code	Enforcement (Port State)	
Department of Transportation (DOTr)	X	X																							
- Maritime Industry Authority (MARINA)	X	X	X	X	X	X	X	X														X			
- Philippine Coast Guard (PCG)	X	X		X			X	X	X	X	X			X	X	X		X	X	X					X
- Philippine Ports Authority (PPA)	X	X							X		X			X	X			X	X	X					X
- Cebu Port Authority (CPA)	X	X							X		X			X	X			X	X	X					X
Subic Bay Metropolitan Authority (SBMA)	X	X							X		X			X	X	X		X	X	X					X
Department of Information and Communications Technology (DICT)		X																							
- National Telecommunications Commission (NTC)	X	X		X							X														
Department of Environment and Natural Resources (DENR)	X	X															X			X					X
- National Mapping and Resource Information Authority (NAMRIA)	X	X							X			X													
Department of Science and Technology (DOST)		X																							
- Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA)	X	X															X								

**Figure 5-1.** Cross Table of Responsibilities  
Source: MARINA Overseas Shipping Service

Figure 5-1 shows the general distribution of the different agencies' responsibilities in implementing the Philippine Maritime Strategy following the design of the III Code. As discussed in Chapter 3, it is composed of multi-agencies that have relevant responsibilities in fulfilling the duties and obligations of the Philippines to the International Maritime Organization (IMO). Notice that the MARINA is the agency responsible for transmitting State's communication to the IMO under the common area. Hence, all official communications that need to be transmitted to the IMO, including the encoding of necessary data into the IMO GISIS, are performed by the MARINA through its Overseas Shipping Service. Key personnel were also designated to perform these tasks.

## 5.2 Results

1. Develop and formulate plans, policies, programs, projects, standards, promotion and development of the maritime industry, the growth and effective regulation of shipping enterprises, and for the national security objective of the country;
  2. Establish, prescribe and regulate routes, zones, and/or areas of operation of particular operators of public water services;
  3. Issue certificate of Public Convenience for the operation of domestic and overseas water carriers;
  - 4. Register vessels as well as issue certificates, licenses, or document necessary or incident thereto;**
  - 5. Undertake the safety regulatory functions pertaining to vessel construction and operation, including the determination of manning levels and issuance of certificates of competency to seamen;**
  6. Enforce laws, prescribe and enforce rules and regulations, including penalties for violations thereof, governing water transportation and the Philippine merchant marine, and deputized the Philippine Coast Guard and other law enforcement agencies to discharge these functions effectively;
  - 7. Undertake the issuance of the license to qualified seamen and harbor bay river pilots;**
  8. Determine, fix and/or prescribe charges and/or rates pertinent to the operation of public water transport utilities, facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies or associations recognized by the Philippine Government as the proper arbiter of such charges or rates.
  - 9. Accredite marine surveyors and maritime enterprises engaged in shipbuilding, ship repair, shipbreaking, domestic and overseas shipping, ship management and agency;**
  - 10. Issue and register the continuous discharge book of Filipino seamen;**
  11. Establish and prescribed rules and regulations, standards and procedures for the different and effective discharge of the above functions;
  12. Perform such other functions as may now or hereafter be provided by law.
- MARINA Functions**  
Executive Order 125a, Section 12

Figure 5-2. Functions of the Maritime Industry Authority

Based on the interviews, focus group discussion, and the information gathered from the written questionnaires and desktop research, the MARINA draws its powers and authorities from the Maritime Decree of 1974, the law that created the office. Its earlier function was the formulation of the maritime industry development program. In 1994, it officially assumed as the Flag Administration and took over the functions from the Philippine Coast Guard. As A Flag Administration of the Philippines, the MARINA draws its functions from the EO 125a, section 12, as shown in Figure 5-2. Generally, these functions are all aligned with the duties of the flag state as mandated by the UNCLOS under Article 94. The results of the interviews produced deeper insights into how the MARINA performs its flag state obligations. While a few participants claimed that the MARINA is performing above the satisfactory level, most participants believed that the MARINA would perform better if additional manpower, particularly technical personnel such as the inspectors, surveyors, and auditors, were recruited or hired. On the discussion about the maintenance of vessel registry as one of the essential flag State duties of the MARINA, the attention was directed at the number of Philippine registered ships and the number of surveyors currently employed in the MARINA. In 2020, the MARINA was regulating 30,174 vessels.

### 5.2.1 Flag State Duties Performed by the MARINA

The MARINA performs most of the flag state duties as specified in Article 94 of the UNCLOS. In exercising its jurisdiction and control in administrative matters over a ship flying its flag, the MARINA, through the Philippine Maritime Administration, ratified IMO instruments and crafted national laws and regulations by making direct references to the applicable IMO instruments. This is evidence by the PD 474, EO125a, PMMRR 1997, and the various MARINA circulars. On Technical matters, the Auditor's Manual and the Ship Survey System (3S) Manual provide specific guidelines on how MARINA performs inspections, surveys, and audits. On Social Matters, the MARINA and the Department of Labor and Employment (DOLE) work closely to ratify and implement ILO MLC instruments. This is evident by the latest ratification of the Philippines to the Seafarer's Identity Documents (SID)<sup>6</sup> Convention (revised), 2003 (no. 185). "One of the issues considered crucial for improving maritime security is ensuring that seafarers have documents enabling their "positive verifiable identification". " (*Seafarers' Identity Documents*, n.d.). The SID contains high-security features and follows standard designs as prescribed by the convention. As one of the countries that started implementing the convention, the MARINA started issuing SID cards to Filipino Seafarers in 2019. This achievement makes the Philippines the first ratifying Member to be "whitelisted" under the ILO Convention 185. Figure 5-3 shows the evidence of this remarkable performance.

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<sup>6</sup> The Seafarers' Identity Document is an ID Card issued to Seafarers to provide them with secured identity card that can be easily verified. This Card also grant seafarers with privilege to transit in member states for purpose of reporting to and transferring ships and a limited number of shore-leave in countries where their ships call. (ILO C185, 2003)



**Figure 5-3.** Seafarer's Identity Document (SID)

Source: <https://marina.gov.ph/2020/12/10/ph-is-first-ratifying-country-listed-as-meeting-international-requirements-for-seafarers-identity-document-sid/>

#### 5.2.1.1 The duty to maintain vessel registration

The regulation for the registration of vessels under the Philippine Flag is covered by the PMMRR 1997. These regulations are further supplemented by MARINA Circular Numbers 181 and 182. Regulation XV/3 – Certificate of Philippine Registry states that “Every ship used in the Philippine waters, not being a transient of foreign Registry, shall be registered with the Administration. Ships owned by Philippine national to be used in international waters shall likewise be registered with the Administration”. (PMMRR, 1997). Convention size vessels engaged in domestic trade are required to comply with the provisions of mandatory IMO instruments and the PMMRR 1997 in

the same manner that all ships engage in international trade must also comply. The difference is that for vessels engage in international trade, the MARINA has granted full delegation authority to the RO in so far as the safety inspections, surveys, and audits, and the issuance of equivalent certificates except for the Minimum Safe Manning Certificates, Continuous Synopsis Record, Permit to Operate High-Speed Craft and the Exemption Certificate. The rules on the accreditation of Recognized Organizations are regulated by MC 2018-01. While for vessels engaged in domestic trade, the statutory certifications and issuance of related certificates are carried out by the MARINA technical personnel.

The registration of Philippine ships is governed by the PMMRR 1997 Chapter XV paragraph 2a, which provides the regulations for registration, documentation, and Licensing of Ships. Under these regulations, every Philippine-registered ship is vested with the right to fly the Philippine flag, as its nationality, on the high seas and under the sovereignty of the Philippines. (Regulation XV/2, Registration of Ships). In performing the duty to maintain a Registry of ships, the MARINA maintains two sets of vessel registries; the first Registry is dedicated to the vessels engaged in overseas trade, and the second is for the vessels engaged in domestic trade. The Registry of Vessel engage in international trade is presently maintained by the Overseas Shipping Section of the MARINA Regional Office National Capital Region, while the Registry of Vessels engages in domestic trade is maintained by the different regional offices to include MRO NCR, which also maintains a registry of domestic vessels. The records of both Registries are further maintained Maritime Information System Service based in the Central Office.

#### 5.2.1.2 The duty to assume jurisdiction over the affairs of flagships;

The MARINA regulates all Philippine-registered ships through the PD 474, PMMRR 1997, EO 125a, and the various MARINA Circulars that make direct references to the IMO instruments. These regulations cover the function of MARINA to grants all Philippine-registered ships with the right to fly its flag after satisfying all the required processes of vessel registration. The assumption of jurisdiction over the affairs of all Philippine-registered ships is evidence by the issuance of Certificate of Ownership and the Certificate of Philippine Registration and the issuance of licenses of the

Master, Officers, and crew which are conforming with the standards set by international and national laws and regulations.

#### 5.2.1.3 The duty to conduct ship surveys and inspections;

In conducting ship surveys and inspections, the MARINA maintains a pool of qualified and certified surveyors to undertake surveys and inspections of all Philippine-registered ships engaged in domestic trade. At present, 103 Surveyors are performing this duty. Ship surveys are conducted before the commissioning of every ship to determine seaworthiness. Annual and other periodic surveys are also conducted to ensure that the vessels continuously comply with the minimum safety conditions. The performance of this duty is guided by the 3S Manual, which provides the general and specific guidelines of ship surveys and inspections. In the case of Philippine-registered ships engaged in international trade, the MARINA granted full delegation authority to ten RO for the required statutory certifications and other marine services.

#### 5.2.1.4 The duty to issue necessary certificates;

The MARINA issues necessary certificates to all Philippine-registered ships after the favorable results of the survey. These certificates are issued with corresponding conditions and expirations. Hence, all of the certificates issued by the MARINA are subject to initial, annual, renewal, and occasional surveys to ensure compliance with the conditions set by the certificate. Accredited RO, acting on behalf of the Administration, is authorized to issue a necessary certificate to Philippine-registered ships engage in international trade.

#### 5.2.1.5 The duty to conduct investigations and hold inquiries;

Investigation into marine casualty has long been established to be the function of the Philippine Coast Guard. This is provided by two national laws which stated the following:

*The Specific Powers and Functions of the Administrator under Section 12(e) of the Maritime Decree 1974 states that the Administrator “shall Investigate by itself or with the assistance of other appropriate government agencies or officials, or experts from the private sector, any matter within its jurisdiction, except marine casualties or accidents which shall be undertaken by the*



*Philippine Coast Guard” (PD 474, 1974). This law is further strengthened by the RA 9993 Section 3(j), which states, “To investigate and inquire into the causes of all maritime accidents involving death, casualties, and damage to properties” (R.A. No. 9993, n.d.).*

The intents of the two laws that provide authorities to the Philippine Coast Guard to be the marine casualty investigation body of the Philippines are clearly stated. However, there seemed to be some issues between the MARINA and the PCG, particularly jurisdiction. The jurisdiction of the PCG is only within the territorial water of the Philippines. Hence, the PCG conducts casualty investigations for cases within the jurisdiction of the Philippines while the MARINA performs the marine casualty investigations for cases of very serious casualty involving Philippine-Registered Ships outside the Philippines.

In some cases of accidents, the MARINA casualty investigators could not be deployed immediately due to travel requirements related to visa approval. For this reason, the MARINA, in close coordination with the other substantially interested states, exchanges and shares pieces of evidence to determine the probable cause of the accident. However, even in this manner, the principle of confidentiality restricts sharing of information. Another challenge in the performance of this duty is if it involves the death of Filipino seafarers onboard a foreign-registered ship. This is critical for the Philippines as most Filipino Seafarers are employed by the other Flag States. In cases like this, the MARINA defers the investigation to the concerned Flag State of the ships. In some cases, Philippine officials stationed in the country near the place of the accident are performing limited investigation and share their findings with the MARINA. However, most of the time, the effort from the Philippine government is limited to the proper repatriation of the remains of seafarers back to the Philippines.

#### 5.2.1.6 The duty to take enforcement measures;

The MARINA prescribed standard rules and regulations through the PMMRR 1997 and the various MARINA circulars, providing the general and specific guidelines of its compliance and the corresponding fines and penalties for its violations. In enforcing these regulations in a national jurisdiction, the PCG assists the MARINA by reporting violations and acting as witnesses during the hearing of the cases. The MARINA,

through its Legal Service, imposed fines and penalties for every clear violation committed. Since most Philippine-registered ships engaged in international trade rarely visit the Philippines, the enforcement measures are carried out through the Port State Control Inspections. In like manner, the MARINA Legal Service also resolves reported cases of violations involving the Philippine Flag vessels trading overseas. Ship Owners or operators are summoned and directed to show proof of rectification or corrective actions. Concerned RO who issued the certificates of vessels subject to the investigations is also directed to oversee and supervise the necessary actions to be taken and ensure that the same are satisfactorily complied with. In some cases, MARINA surveyors are deployed to verify the status and condition of the vessels officially.

#### 5.2.1.7 The duty to file reports with the IMO.

As the agency responsible for transmitting relevant communications to the IMO, the MARINA performs this duty by consolidating every report of the ICCRIMC and the IMSAS Council meetings. These reports are further translated into official communications and transmitted to the IMO through GISIS by the MARINA through its Overseas Shipping Service.

#### 5.2.1.8 The duty to conform to generally accepted international regulations, procedures and practices;

This duty encompasses the performance of all the above-stated duties, which must conform to the international standards set by the IMO instruments generally accepted by the member states. In conforming with this duty, the MARINA crafted rules and regulations by directly referencing the IMO instruments. Its implementation follows the generally accepted practices, particularly by the Philippine-registered ships and Filipino seafarers engaged in international trade.

### **5.3 Discussion**

#### **5.3.1 III Code Standards**

#### 5.3.1.1 Common Areas

Consistent with the commitment of the Philippine government to effectively comply with the IMO conventions, Department Order No. 2015-016 was issued and officially created the Inter-Agency Coordinating Committee on the Ratification and Implementation of Marine Conventions (ICCRIMC). This body was created to specifically promote an integrated and sustainable maritime industry to ensure its global competitiveness. (Department of Transportation and Communications, 2015). Among its functions are developing and adopting a national program to facilitate the ratification and implementation of IMO instruments and developing a mechanism in assessing its implementation status. The Department Order also provides funding support to carry out the related activities. Among the initial accomplishment of the ICCRIMC is the Philippine Ratification to 6 instruments in 2018. Among these are the Protocols of 1978 and 1988 of SOLAS, the Load Lines Protocol of 1988, the MARPOL Annex VI Protocol of 1997, the AFS 2001, and the BWM Convention 2004. These achievements mark significant progress of the Philippine Maritime Administration. To further enhance its compliance with the IMO, the Philippines established the IMSAS Council through the Executive Order No. 84, signed and approved in July 2019. This Executive Order also creates a Technical Working Group to assist the IMSAS council on matters related to technical requirements of the IMO conventions. Moving forward to 2020, the Philippine Maritime Strategy was approved and adopted by IMSAS Council Resolution No. 01, series of 2020, on 10 June 2020. This Philippine IMO strategy manifests that the Philippines have finally satisfied the III Code Part 1 paragraph 3. One of the strategy's main goals is the effective implementation and enforcement of the mandatory IMO instruments. This document was communicated to the International Maritime Organization (IMO) in accordance with the Flag State reporting requirement to the Organization. The Inter-Agency Council on the IMSAS serves as the coordinating body for entities charged with implementing and enforcing the applicable IMO instruments to which the Philippines is a Party. The IMSAS Council further establishes formal relationships with all government departments and agencies responsible for implementing the Philippine Maritime Strategy. It is worthy to note that in all of the bodies created, the MARINA is participating not just as an active member but also as the secretariat of the IMSAS council. These efforts are a

clear manifestation of the strong commitment of the MARINA to comply with the IMO conventions.

#### 5.3.1.2 Implementation

The Philippines is a party to all of the IMO mandatory instruments covered by the III Code. In implementing these instruments, the MARINA refers to the Philippine Merchant Marine Rules and Regulations of 1997 (PMMRR), which integrated and codified the relevant IMO instruments. However, the PMMRR 1997 can no longer give full coverage to the III Code for the apparent reason that the regulations were fully implemented in 1999 or 21 years ago, reckon from 2020. While the PMMRR of 1997 has been subjected to review, it has never been officially revised to incorporate and consider new IMO instruments that were adapted and amended after 1997. For these reasons, the MARINA continues to make direct references to the IMO instruments for its implementation. In place of the national legislation are the various MARINA Circulars that provide specific regulations covering its implementation.

#### 5.3.1.3 Delegation of Authority

On matters related to the delegations of its Authority, the MARINA Circular No. 2018 – 01 was issued to prescribe rules on the accreditation of Recognized Organizations that are authorized to perform statutory certification on behalf of the Administration. This MC has also made direct reference to the MSC No. 349(92) or the RO Code, the MEPC 237(65), and the ILO in general. Among its specific provisions are that there should be an active and signed Memorandum of Agreement between RO and the Administration and that all of the statutory certificates that the RO will issue shall bear the logo of the Administration or the official seal of the Philippines and the text indicating that the same were issued under the Authority of the Republic of the Philippines. In line with MC No. 2018-01 and MC No. MS-2020-02, the MARINA reserves the right to audit the ROs, upon showing clear grounds of violation of the Memorandum of Agreement. Also integrated into the written agreement is the reporting requirement mandating the RO to notify the Administration of every service rendered to the Philippine shipping companies and the Philippine-Registered Ships. Except for the issuance of Exemption Certificate, Minimum Safe Manning Certificate, Continuous Synopsis Record, and Permit to Operate High-Speed Craft, the

accredited ROs have been granted with full delegation authority to issue all the other statutory certification and services, issue documents of compliance and revocation certificates on behalf of the MARINA as the Administration. Below is the list of ROs that have existing agreements with the MARINA.

1. American Bureau of Shipping (ABS)
2. Bureau Veritas Marine & Offshore SAS (BV)
3. China Classification Society (CCS)
4. Det Norske Veritas (DNV) - Germanischer Lloyd (GL) AS (DNV-GL-AS)
5. Hellenic Register of Shipping
6. International Register of Shipping (IRS)
7. Korean Register of Shipping (KRS)
8. Lloyds Register
9. Nippon Kaiji Kyokai (NK)
10. Registro Italiano Navale (RINA)

#### 5.3.1.4 Enforcement

The enforcement of international and national regulations involving Philippine-Registered Ships engaged in domestic trade are shared by the MARINA and the PCG. On the one hand, the MARINA is heavily engaged in statutory certifications such as the registration of vessels and the ship's surveys prior to registrations, the periodic survey and inspection, and the imposition of fines and penalties after the proceeding of cases involving violations. On the other hand, the PCG assists the MARINA by reporting violations and prohibiting ships from sailing unless corrective actions have been satisfactorily met upon further advice from the MARINA. The presence of PCG units in almost all ports in the Philippines gave them the best opportunity to monitor ships operations to include violations of the MARINA regulations. Hence, violations are reported to the MARINA for appropriate resolution wherein there are occasions when PCG personnel act as witnesses to the cases. Convention-sized vessels engaged in domestic trade must comply with IMO conventions and the PMMRR 1997, while Non-convention size vessels are only subjected to the PMMRR 1997. In enforcing the maritime regulations within the territorial water of the Philippines, every ship intending to engage in commercial trade has to submit applications and necessary documents covering the transaction from the start of vessel construction up to the time when it is determined to be safe to sail for its intended purpose. This entails monitoring the construction that MARINA Naval Architect carries out to ensure that the vessel is constructed according to the

approved vessel plan, inspecting the safety standard of the navigational equipment, tonnage measurement, stability test, load line assignment, and prescribing its minimum safe manning requirements. It will then be subjected to sea trial<sup>7</sup> wherein technical personnel from the MARINA must supervise and witness the process. For a comprehensive survey, the MARINA developed the Ship Survey System (3S) Manual designed to ensure that all registered ships maintain safe operating conditions and comply with the mandatory rules and regulations related to the safe operation of the ship and protection of the ship the marine environment. (MARINA, 2014).

### 5.3.1.5 Flag State Surveyors

In complying with the III Code on Flag State Surveyors, the MARINA has developed the Auditor's Manual and the Ship Survey System (3S) Manual. These two manuals define and document the responsibilities, authority, and interrelation of all personnel involved in the surveys and audits of ships and shipping companies.

III Code	Qualification Requirements	Auditor's & 3S Manuals
<p>29.1- appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship's officer holding or having held a valid management level certificate of competency and having maintained their technical knowledge of ships and their operation since gaining their certificate of competency;</p> <p>29.2- a degree or equivalent from a tertiary institution within a relevant field of engineering or science recognized by the flag State; or</p> <p>29.3- accreditation as a surveyor through a formalized training programme that leads to the same standard of surveyor's experience and competency as that required in paragraphs 29.1 and 29.2...</p>	<p>54.1.a. A qualification from a marine or nautical institution to include experience in ship operations; or</p> <p>54.1.b. A qualification from a technical institution with a degree majoring in naval architecture and marine engineering, mechanical engineering, electrical engineering, civil engineering or other related physical science;</p> <p>54.1.c. R.A. 1080 Civil Service Eligible for Ship Surveyor - IV, Ship Surveyor - III, and Surveyor - II;</p> <p>54.1.d. Professional Civil Service eligibility;</p> <p>54.1.e. He or she should be proficient in the agreed language of the survey.</p>	

Figure 5-4. Qualification of Auditor's and Surveyors

<sup>7</sup> The primary purpose of sea trial is to determine ship performance in terms of speed, power and propeller revolution under prescribe ship conditions, and thereby verify the satisfactory attainment of the contractually stipulated ship speed. (Ship Survey System Manual)

Figure 12 shows the minimum qualification requirements of surveyors and auditors as prescribed by the III Code and the MARINA Auditor and 3S manuals. In an interview with a retired Master, who is now the president and founder of MARTRAIN 2011 Safety and Security Service and one of the prominent figures in casualty investigation in the Philippines, shared that an experienced Master and Chief Engineer may not have the technical expertise to qualify them as an auditor or surveyor until they undergo comprehensive training to gain the right competencies. Nevertheless, in choosing between the seafarers and the non-seafarer professions, seafarers have the edge. These statements hold true regarding the actual seagoing experience, which makes seafarers preferable over the other professions.

#### 5.3.1.5.1 Education

The qualifications set by the MARINA are aligned with the III Code standards. However, it is interesting to note that while the III Code emphasized the seagoing experience as certified ship's officers, the MARINA requirements simply stated it as experience in ship operations. It is also noted that MARINA is considering other professions with Professional Civil Service Eligibility<sup>8</sup> for the entry-level Surveyor. Under the 3S Manual, surveyors are categorized into Cadet Ship Surveyor (CSS), Ship Surveyors I (SSI), Ship Surveyor II (SSII), Ship Surveyor III (SSIII), and Ship Surveyor IV (SSIV) as the highest category. The Civil Service Eligibility granted through the RA 1080<sup>9</sup> refers to the passers of the bar examinations for bachelor of law and the licensure board examinations for all other college degrees. Professional eligibility is critical to seafarers who will later decide to join the government, particularly the Maritime Administration. In recruiting for technical persons, it would fare better if the MARINA considers only those who are graduates of engineering or applied science courses and at the same time passed their board examinations. The

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<sup>8</sup> The Professional Eligibility granted to graduates of any four-year college course who successfully pass the examination administered by the Civil Service Commission. The professional eligibility is a minimum qualification for second level positions in the government such as professional, technical, and scientific positions.

<sup>9</sup> Republic Act No. 1080, as amended, declares that "the bar examinations and the examinations given by the various boards of examiners of the Government are declared as civil service examinations".

examinations administered by the Civil Service Commission cover general management, which is not technically aligned with the engineering degree. Hence, an engineering graduate who passes the board examination is technically proficient than an engineering graduate who passes the civil service examination.

#### 5.3.1.5.2 Training

To further capacitate the Surveyors, formal training is conducted by the MARINA. These trainings include Ship's Familiarization to include 1-month onboard training and orientation, Ship Survey System, orientation on rules and regulations to include the applicable IMO instruments. In some cases, technical persons from the RO are invited to administer lectures and equivalent examinations to determine the proficiency of the trainees. It is important to note that passing the examinations is not enough to qualify trainees as surveyors, practical works, including the minimum number of surveys and time spent under close supervision by certified surveyors, have to be satisfactorily met.

#### 5.3.1.5.3 Work Experience

The categories of surveyors are directly dependent on their training and experience. As each surveyor performs more surveys, it gets more experience and therefore gains more skills and knowledge. It also depends on the number and sizes of surveyed ships and the years of experience as surveyors. At a minimum, every surveyor must have surveyed at least twenty-five (25) ships.

**Table 5-1.** Work Experience of Ship Surveyor

Size of Ships	Categories of Surveyor			
	SS I	SS II	SS III	SS IV
≤ 250 GT				
≥ 250 GT	≥10			
≥ 750 GT		≥10		
≥ 1,500 GT			≥10	
≥ 5,000 GT				≥10
Total No. of Ship	≥25	≥25	≥25	≥25



Size of Ships	Categories of Surveyor			
	SS I	SS II	SS III	SS IV
experience	2 years/ 1 yr as CSS <sup>10</sup>	5 years/ 1 yr as SS I	7 years/ 1 year as SS II	10 years/ 1 year as SS III

Table 2. shows the categories of Ship Surveyors and the required experience, size, and the number of ships they need to survey before they are promoted to higher categories as provided by the 3S Manual. SS I have to conduct at least 25 ship surveys, and 10 of these ships must at least be 250 GT and above. On top of these surveys, he must acquire a minimum of two years' experience with one year as a Cadet Ship Surveyor to qualify for one category higher. The same principle applies to every category. These guidelines provide a gradual promotion of surveyors, giving them enough time to gain experience and eventually qualify them to perform more challenging tasks, the surveys of bigger ships.

#### 5.3.1.6 Flag State Investigations

Contrary to the laws that obligate the PCG to conduct marine casualty investigation, the MARINA is currently performing marine safety investigations that adheres to the IMO Casualty Investigation Code (IMO CIC). It created the Marine Casualty Investigation Section (MCIS) as an integral part of the Enforcement Service and the focal unit responsible for conducting marine safety investigations. The MCIS conducts marine investigations for cases of a very serious accident in the territorial water of the Philippines and those "very serious marine casualties"<sup>11</sup> involving Philippine-registered ships and Filipino Seafarers outside the Philippines. This is the current practice pending the creation of the National Transport Safety Board. While waiting for this body, the MCIS supports the Regional Marine Casualty Investigation Section (RMCIS), which was created to conduct investigations related to cases of a

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<sup>10</sup> Cadet Ship Surveyor are those newly hired personnel who are qualified only to assist the surveyor due to lack of their technical capacities. CSS are usually tasks to observe in preparation for their appointment to SS I. (Ship Survey System Manual).

<sup>11</sup> A very serious marine casualty means a marine casualty involving the total loss of the ship or a death or severe damage to the environment. (Resolution MSC.255(84)).

less serious and serious marine incident in their regional jurisdictions. In adherence to the principle of impartial and objective investigations, the Enforcement Service is independent of all the other MARINA offices that perform statutory certifications and issue the related ship's certificates. As it directly reports to the Administrator's office, no other office can influence how it conducts the investigations. At present, 11 persons are trained as Casualty Investigators. Consistent with the IMO CIC, the Administration is conducting a safety investigation into all cases of very serious marine casualties involving Philippine-Registered irrespective of the location of the accident. The MARINA is also an active member of the Maritime Accident Investigators' International Forum (MAIIF) and the Maritime Accident Investigators' Forum in Asia (MAIFA).

#### 5.3.1.7 Evaluation and Review

The performance evaluation and review were carried out using the Key Performance Indicators provided in the Philippine Maritime Strategy. Having ratified all of the IMO mandatory instruments, the Philippines is working on transposing these conventions into national legislation. In the meantime, their implementation is covered by the PMMRR 1997 and the various MARINA Circulars currently in force. In monitoring the RO, the MARINA has formally entered into a working Memorandum of Agreement with them. On enforcement matters, the MARINA and the PCG carry out the enforcement of the international maritime rules and regulations. The legal mechanisms for cases of violations are correctly in place. While the full implementation of the ship survey system has been affected by the pandemic, the MARINA and the PCG are jointly conducting the Casualty Investigation.

### **5.3.2 Best Practice in the Region**

#### **5.3.2.1 Top Management of the Administration**

In most Maritime Administrations, the top management or the head of the office is technically proficient people for the primary reason that maritime administration is performing technical functions. In choosing between an incorruptible retired military general and an incorruptible person who has significant experience in maritime affairs, the latter will serve better. However, while many are qualified with the former choice, only a notable few fit the latter option. Nevertheless, the Maritime Administration of the Philippines should perform its mandated tasks by giving more attention to attaining its technical obligations.

#### **5.3.2.2 Masters and Chief Engineers as Auditors and Surveyors**

In some countries, Masters and Chief Engineers are recruited to form part of the primary pool of surveyors and auditors. These countries usually offer competitive salaries to attract seafarers into joining the Maritime Administration. The wages may not be as high compared to their wages while working onboard vessels, but it was not an entry to mid-level salary grade. A case in point in the MARINA is the recruitment of seafarers as Maritime Education and Training Supervisor Specialist (METSS) under the STCW Office. Seven Masters and five Chief Engineers were recruited and now form part of the Panel of STCW Experts. Following the same formula, the MARINA can also recruit seafarers to form part of the pool of surveyors and auditors by offering the same salary compensation offered to METSS.

#### **5.3.2.3 Port State Control**

In the Maritime Administration of some countries in the region, the Flag State and the Port State Control are performed by the technical personnel of the Maritime Administration. The Philippines must adopt this practice. Port State Control is inherently a function of maritime administration. The Maritime Administration of Japan, the Republic of Korea, and India are practicing this. In the Philippines, the MARINA surveyors are fully engaged with the domestic vessels only. While it can also survey Philippine Flags trading outside the country once they visit the country, such occasions rarely occur. For these reasons, the MARINA surveyors are deprived of the vast opportunities to inspect foreign-flag vessels calling the Philippine ports. Allowing

the MARINA surveyors to participate in the Port State Control would provide relevant experience to enhance their professional capacities further.

#### 5.3.2.4 Marine Casualty Investigation Body

While it is already in the pipeline of the legislative branch of the Philippines, other countries have already established their Transport Safety Board to carry out marine casualty investigations. This body requires technical skills, knowledge, and equipment to perform its mandated tasks effectively. The establishment of this body would resolve the long-standing issues between the MARINA and the PCG on who should be conducting marine casualty investigations in the Philippines.

### 5.4 Summary

The Philippines as a Flag State has successfully established the Philippine Maritime Administration, thereby harmonizing all the efforts required to comply with the IMO instruments. Among its significant achievement is the Philippine Maritime Strategy on the Implementation and Enforcement of Relevant Instrument of the International Maritime Organization (IMO) 2020-2024. This Philippine maritime strategy will pave the way for ratifying other relevant IMO instruments that the Philippines is not yet a party to. It will improve the time to implement the IMO instruments and further facilitate the faster legislation of national law. But while it is an excellent achievement, on the one hand, it poses a significant challenge on the other hand.

Two of the most critical Flag State duties of the MARINA need significant attention: the maintenance of the Registry of Ships and the performance of ship's surveys. As discussed in chapter 3 and shown in Figure 3-8, there are 30,074 Philippine Registered Ships. Following this information, it is worth asking how the 103 MARINA Surveyors surveyed the ships before their registration? In the absence of available information, this research finds it difficult to assess the performance of the MARINA in as far as the Registry of 29, 074 Ships in Domestic trade is concerned. The Registry of 100 ships in overseas trade is well managed due to the full delegation of authority to the RO.

The keys to effective maintenance of ships are through surveys and Flag State Inspection (FSI). FSI must be regularly conducted to ensure continuous compliance with the safety certificates. If 103 surveyors managed to surveys the 29,074 vessels in one year, it could be illustrated as follows:

$$\frac{29,074}{103} = 282 \text{ vessels per surveyor}$$

Every year, one surveyor has to conduct 282 ship surveys. The number of working days in the Philippines for the year 2020 is 241<sup>12</sup>. It could be translated that even if the surveyors complete one (1) ship survey per working day, they will still have to work on weekends to cover the other 41 vessels. The computation has not yet factored in the travel time for surveyors to reach the ships' locations and the time they need to file the report and recommend issuing the certificate.

Of the 29,074 domestic ships, 12,989 are fishing vessels. In some countries, the Maritime Administrations only regulate merchant vessels while the fishing vessels are regulated by another office, usually in charge of Fishery matters. This arrangement allows ship surveyors to focus more on the safety regulations of merchant ships. If the number of fishing vessels is deducted from the Registry of Philippine-Ships, the surveyors may perform ships survey better. Below is the illustration:

$$\frac{16,085}{103} = 156 \frac{\text{vessels}}{\text{surveyor}}$$

Following the same principle, if there are 241 working days in a year, the surveyors will now have 85 available days to file their reports and to recommend issuance of the certificates. This should probably work better, but in ensuring that the ships continuously comply with the standard safety conditions, there should be regular Flag State Inspections (FSI). Ideally, FSI should be conducted once a year, a few months after the survey, to ensure continuous compliance to minimum safety of registered

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<sup>12</sup> 2020 is a leap year which has 366 days in total. In Philippines, there are 104 weekends, 12 regular holidays, 9 special non-working holidays and **241 working days**.  
Source: *Working Days in Philippines in 2020*. (2021, January 16).  
ExcelNotes. <https://excelnotes.com/working-days-philippines-2020/>

ships. However, at present, there are no clear regulations relating to the regular conduct of FSI. Otherwise, the surveyors will have to double their efforts as they will also conduct FSI.

**Table 5-2. Ratio of Ship Survey and Flag State Inspection**

Ship Survey/Surveyor	Flag State Inspection/Inspector	Total number of surveys and inspection
$\frac{16,085}{103} = 156 \frac{\text{vessels}}{\text{surveyor}}$	$\frac{16,085}{103} = 156 \frac{\text{vessels}}{\text{Inspector}}$	$\frac{32,170}{103} = 312$

Table 5-2 shows the estimated number of technical tasks that each surveyor and inspector need to undertake each year to ensure the safety compliance of merchant vessels alone. The ratio of vessels to the surveyors is overwhelming, and If the MARINA continues to regulate fishing vessels, the tasks are too tedious to accomplish.

While these surveyors have the competence to perform technical tasks, the number of vessels that they need to surveys is way beyond their capacity. “The Numbers Do Not Lie.”. In these particular Flag State Duties, the MARINA can only perform better by recruiting additional technical people to complement the number of surveyors NEEDED to perform specialized tasks effectively. The other option is to delegate or transfer the safety regulation of fishing vessels to the Bureau of Fisheries and Aquatic Resources (BFAR) to reduce the workload of surveyors. This can be addressed by allowing the BFAR to recruit their own technical people and subject them to appropriate training. A minimum of two years' transitions from the MARINA to BFAR will make things possible.

## 6 Conclusions and Recommendations

### 6.1 Conclusions

“As a specialized agency of the United Nations, the IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping.” (IMO, n.d.). It is primarily responsible for creating a fair and effective regulatory framework that serves as every member state's model maritime policy framework. Similar to the IMO, the MARINA is a specialized agency of the Philippines. It is supposed to be the national standard-setting Authority for the safety, security, and environmental protection of shipping in and out of the country. However, setting the international standard and the national standard always differ from one country to another. In the context of the Philippines, the MARINA sets the standard for the maritime safety of shipping operations. The PCG partly sets the standard for marine environment protections from ships, while the standard setting for maritime security is presently set by the Office of the Transport Security (OTS). With this situation, the Maritime Industry Authority (MARINA) could not possibly claim as the sole AUTHORITY in the maritime industry. Hence, the MARINA should consider changing its name to Maritime Safety Administration, a name that perfectly fits with the duties and functions that it performs.

As the Flag Administration of the Philippines, the MARINA has lived up to its commitment by performing its duties as mandated by the UNCLOS and the mandatory IMO instruments. In performing its flag state's duties, it has shown proof of competence to regulate the shipping industry in the Philippines. However, such competence is greatly challenged by the inadequate capacity to completely and effectively discharge all of its duties owing to inadequate technical personnel.

Considering the rapid development in maritime affairs, the MARINA has to work on transposing the IMO instruments into national law effectively and the immediate revisions of the PMMRR 1997 to address amendments and new IMO instruments.

## **6.2 Recommendation**

### **6.2.1 Surveyors**

The MARINA should consider immediate hiring of technical personnel to augment the apparent lack of surveyors presently employed. It should seriously consider hiring experienced Masters and Chief Engineers by offering them competitive salaries similar to what is being offered to the METSS of the STCWO.

### **6.2.2 Ship Survey System**

The inadequate number of surveyors that could properly survey the volume of Philippine-registered ships in domestic trade has raised issues on how the MARINA maintains records to show proof that such surveys were done properly or carried out. For these reasons, it is recommended that every survey report must incorporate pictures showing the condition of the ship on the date and time of the survey and duly acknowledged by the master and the surveyor through their signature. It must also show the general location where the ship was surveyed. These photographs must form part of the record of the vessel. In ensuring the integrity of the survey, it is also recommended that surveyors who performed the last survey must not be assigned to perform the survey of the same ship for a period of two years. A system for centralized deployment of surveyors must also be considered.

### **6.2.3 Port State Control**

To enhance the technical skills of MARINA surveyors, they must be allowed to participate in the Port State Control<sup>13</sup> activities that are presently performed by the PCG.

### **6.2.4 Marine Casualty Investigation**

The Philippine Transport Safety Board must be officially established to finally resolve the issue of marine casualty investigation of the Philippines.

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<sup>13</sup> "Port State Control is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulation and that the ships and that the ship is manned and operated in compliance with these rules." (*Port State Control*, n.d.)



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# Appendices



## Annex 1

### 8.1.3 Findings:

#### Observation

- .1 It was established that the State has no strategy for meeting its overall obligations and responsibilities contained in the mandatory IMO instruments to which it is a Party. This was evidenced by the lack of documentation setting out the strategy; absence of continuous review and verification of the effectiveness of the State in respect of its international obligations; and the overall organizational performance and capability had not been assessed (The Code, Part 1, paragraph 3). See [OB-01](#).

8.1.4 **Legislation.** The Philippines does not transpose the text of IMO instruments or their amendments into their national legislation (Philippine Merchant Marine Rules and Regulations (PMMRR)), but instead makes *direct* reference to the instruments, as amended. These include the instruments which the Philippines is not a party to, eg COLREG 72 and the HSSC system contained in the 1988 Protocols to the SOLAS and LL conventions (*see* paragraph 7.3). As the Philippines is already giving effect to these instruments, it could consider ratifying them. (*see* also section 11 on “Areas for further development”)

### 8.2 Flag State Activities

8.2.1 Flag state activities and work of divisions/departments/subordinate entities are discussed in the succeeding paragraphs:

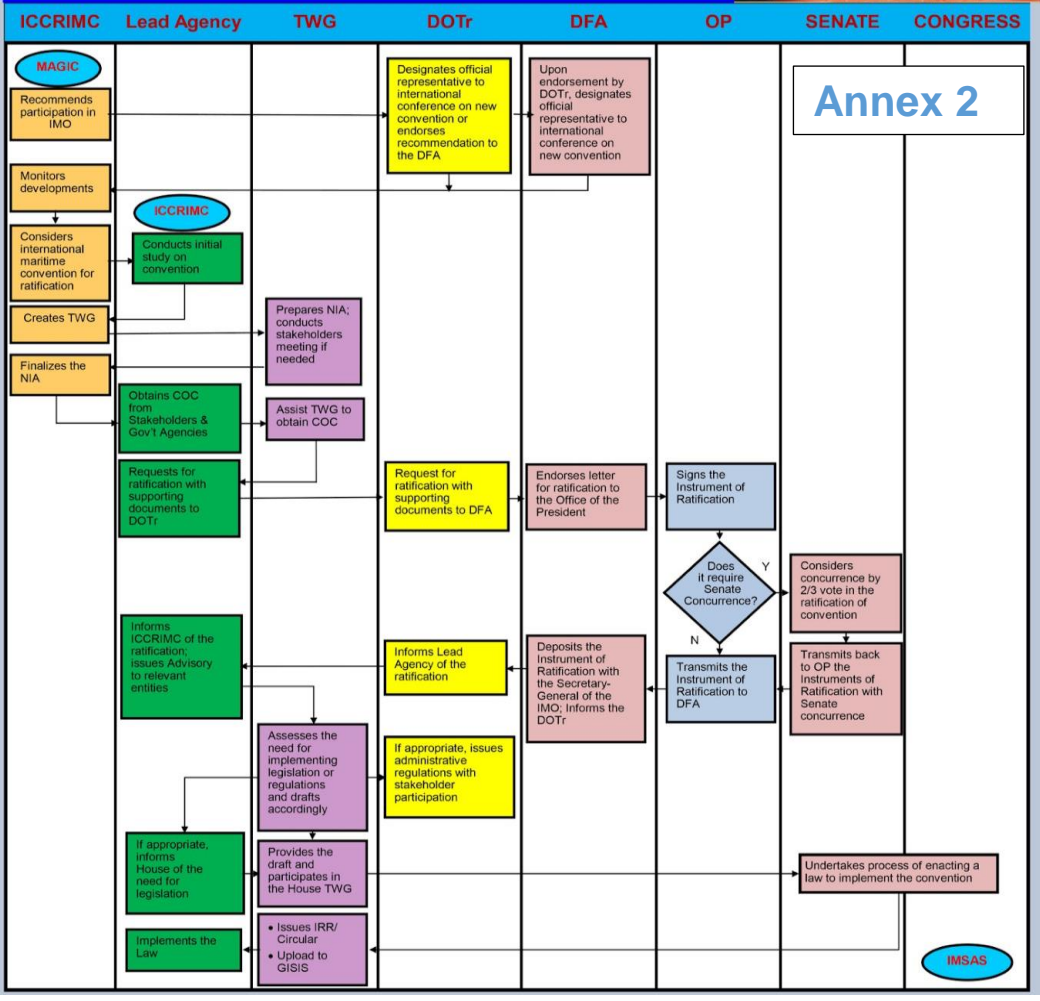
#### ***Maritime Industry Authority (MARINA)***

8.2.2.1 The Philippines' Maritime Industry Authority (MARINA), is an agency of the Philippine government under the Department of Transportation and Communications responsible for integrating the development, promotion and regulation of the maritime industry in the Philippines. The MARINA was created on 01 June 1974 with the issuance of PD 474 and started functioning as an agency attached to the office of the President (OP) on 29 August 1979 with the issuance of PD 761 mandating the agency to integrate the development, promotion and regulation of the country's maritime industry. In 1979, MARINA, pursuant to EO 546 dated 23 July of the same year, was made an attached agency of the Department of Transportation and Communications (DOTC) for policy and program coordination. The MARINA is the flag administration in the Philippines.

#### ***Maritime Training Council (MTC)***

8.2.2.2 The Maritime Training Council, or MTC, was established on May 1, 1984, the year of the Philippines' accession to the STCW Convention. The MTC is attached to the Department of Labor and Employment (DOLE) for administrative and policy control. The functions of the MTC include:

**FLOWCHART OF RATIFICATION AND IMPLEMENTATION PROCEDURE**



**Annex 2**