

PROGRESS IN THE IMPLEMENTATION OF THE PHILIPPINE NATIONAL MARINE POLICY: ISSUES AND OPTIONS

by

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DISCLAIMER

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Acronyms

APEC – Asia-Pacific Economic Cooperation
CABCOM-MOA – Cabinet Committee on Maritime and Ocean Affairs
DA – Department of Agriculture
DAR –Department of Agrarian Reform
DBM – Department of Budget and Management
DENR – Department of Environment and Natural Resources
DEPED – Department of Education
DFA – Department of Foreign Affairs
DILG – Department of Interior and Local Government
DND – Department of National Defense
DOE – Department of Energy
DOF – Department of Finance
DOH – Department of Health
DOJ – Department of Justice
DOLE – Department of Labor and Employment
DOST – Department of Science and Technology
DOT – Department of Tourism
DOTC – Department of Transportation and Communication
DPWH – Department of Public Works and Highways
DSWD – Department of Social Work and Development
DTI – Department of Trade and Industry
LOSC – Law of the Sea Convention
MARINA – Maritime Industry Authority
MOAC – Maritime and Ocean Affairs Center
NEDA – National Economic and Development Authority
NGA –National Government Agencies
NGO – Non-Government Organization
NMP – National Marine Policy
NSC – National Security Council
PLLO – Presidential Legislative and Liaison Office

Definition of Terms

Coastal zone - is a band of dry land and adjacent ocean space (water and submerged land) in which terrestrial processes and uses directly affect oceanic processes and uses, and vice versa; its geographic extent may include areas within a landmark limit of one (1) kilometer from the shoreline at high tide to include mangrove swamps, brackish water ponds, nipa swamps, estuarine rivers, sandy beaches and other areas within a seaward limit of 200 meters isobath to include coral reefs, algal flats, seagrass beds and other soft-bottom areas.¹

Institutional structure – consists of government and non-government organizations with defined roles and responsibilities for planning and implementing ocean sector programs and plans and mechanisms for coordination among those organizational units.

Marine area – refers to the area of the ocean beyond the outer limit of the coastal area within the Exclusive Economic Zone.

Municipal waters - include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from the opposite shore of the respective municipalities.²

Ocean governance – the process of optimizing for present and future generations benefits from the resources in the coastal and marine areas through a set of laws, rules, customs, and organizational and management strategies.³

Ocean policy – a framework of decisions that represents a plan for achieving integrated management of marine resources and ocean space, with a view to avoiding or minimizing conflicts and competing uses of the ocean, and protecting the long-term values and benefits presented by the extension of marine areas under national jurisdiction.⁴

¹ Sec. 4 (9), Republic Act 8550.

² Sec. 4 (58), RA 8550.

³ Maribel Aguilos, "Designing an Institutional Structure for Ocean Governance: Options for the Philippines," in *The Ocean Law and Policy Series* (Quezon City, Philippines: Institute of International Legal Studies, University of the Philippines Law Center, 1998), p. 73.

⁴ Batongbacal, "Karagatang Pilipino: A Critique and Proposal for Revision of the National Marine Policy of the Philippines." p. 19.

Progress in the Implementation of the Philippine National Marine Policy: Issues and Options

Abstract

The Philippine Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA), an inter-ministerial body, was tasked with the coordination and implementation of the National Marine Policy (NMP) until it was abolished in 2001. The dismantling of the CABCOM-MOA can be viewed as a policy reversal as it contradicts previous government initiatives toward integrated ocean management. The experiences gained from the CABCOM-MOA, however, provide important insights in redesigning an institutional framework for coastal and marine governance in the Philippines. This study evaluates the extent to which the objectives of the NMP were achieved and discusses policy and institutional problems related to the NMP and CABCOM-MOA. It also assesses institutional structure options that will enhance coordination and integration of ocean policy.

The slow progress in the implementation of the ocean-related programs, pursuant to the objectives of the NMP, is attributed to the lack of integration of the national ocean planning process with the overall national development planning. Ocean policies and programs often have concomitant public investment requirements, which if not included in the national planning and programming priorities would likely fail due to inadequate resource complement. Policies pertaining to the national territory must be revisited with the view of harmonizing domestic policies with the Law of the Sea Convention. Vertical integration can be improved by linking sub-national planning mechanisms with national ocean policy formulation and decision-making. The paper concludes that ocean policy coordination through an inter-ministerial body augurs well for integrated ocean management. It recommends for the reestablishment of an inter-agency coordinative mechanism and asserts the need to address the following concerns: (1) the integration and defining of roles of the sub-national development planning bodies in the national ocean policy planning; and (2) the integration of ocean planning process into the national development planning.

I. Introduction

The Philippines was one of the first countries to ratify the 1982 Law of the Sea Convention (LOSC). Prior to the Convention's entry into force, the Philippine government established a Cabinet Committee on the Treaty of the Law of the Sea to formulate a plan to address issues related to the implementation of the Convention at the national level. The role of the Cabinet Committee in the development of the Philippine national ocean policy has evolved from taking the narrow view of merely harmonizing domestic laws with the LOSC into a broader conception that aims to maximize the economic opportunities from its expanded maritime jurisdiction while keeping the commitment to preserve the ecological balance of the ocean environment.

The 1994 National Marine Policy (NMP) represents an initial attempt of the Philippines to move towards integrated management and sustainable development of the coastal and marine areas through participative policy and decision-making process that promote consistency and balance among competing ocean uses as envisaged in the Law of the Sea Convention and later reaffirmed in UNCED Agenda 21.⁵

The Law of the Sea Convention (LOSC) has expanded the maritime area subjected to national jurisdiction and management by establishing coastal state rights over living and non-living resources within the territorial sea, continental shelf, and the Exclusive Economic Zone (EEZ).⁶ The duties of coastal state with respect to the marine environment include preventing overexploitation of the marine environment, maintain and restore the health of the marine ecosystems, engage in international cooperation to manage transboundary, straddling, and highly migratory fish stocks.⁷ It is also within the general stewardship responsibility of the state to protect the marine environment by undertaking the necessary measures to control marine pollution.

The LOSC had important implications to the Philippines in relation to archipelagic state regime that recognized the unity of the islands and surrounding waters that comprise the archipelago. The provision pertaining to archipelagic sea lanes passage, however, has also opened certain vulnerabilities related to ship-based marine pollution, and other security-related risks. The Philippines, therefore, is expected to establish measures to promote safety of navigation, ensure accountability of ships traversing the sea lanes, and effectively enforce its sovereign rights over its maritime territory in accordance with the LOSC provisions.

The most significant impact that the LOSC had on international ocean management is the concept that recognizes the interactions between the various ocean uses and their impacts to one another and to the marine environment. Practical application of this concept at the national level would require the building of institutional mechanisms that, in effect, would shift towards more integration and coordination of functions, plans,

⁵ Preamble to the 1982 LOSC; Agenda 21 item 17.1 and 17.5.

⁶ LOSC, art. 3, 57, and 76

⁷ LOSC, Part VII (Sec.2) and Part XII.

and programs by government agencies and other ocean-related sectors to complement the sectoral management approach that characterize most national ocean management regimes.

This study assesses the progress that Philippines have attained with respect to integrated ocean management. Policy and institutional issues are examined and lessons are drawn which may be of relevance for the reformulation of the Philippine National Marine Policy. The study focuses on evaluating the extent to which the objectives of the NMP were achieved and discusses policy and institutional problems related to the NMP and the Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA) that was tasked to implement the NMP. The existing institutional framework for ocean management is assessed based on a set of criteria, which includes the level of integration -- vertically across the ladder of governance and horizontally across ocean-related agencies, planning bodies and legislative institutions, among others. The study also looks into the consistency of ocean policies and programs, legitimacy of the ocean management policy-making and planning, and its integration with the national development planning process. Institutional structure options are reviewed and evaluated based on their capacity to enhance coordination and integration of ocean policy.

II. Conceptual Framework

An institutional framework is just one of the many aspects of the policy environment that can be modified to achieve the desired organizational structure and modes of interaction among the key state including non-state actors can be influenced in a manner that their respective objectives and programs can be directed towards common goals in ocean management and development. While institutional structure is a requisite element of an integrative and coordinative approach to ocean management, it is not the sole determinant of successful ocean governance. Borgese pointed out the important role of institutions in resolving ocean management problems and in adapting to actual environmental conditions:

The world's problems cannot be solved by designing institutions. They must be solved by people. People will design the institutions that they think they need; and the kind of institutions they will build will depend on the kind of culture they were born into. But without building institutions, people would not be able to solve their problems, and if institutions are out of phase with the problems of the real world, an "institutional gap" will open. The likely response of people to the appearance of an institutional gap is violence.⁸

The ocean environment is a host to various resources and diverse human activities sharing the same space where complex interactions between marine ecosystems take place. Unlike terrestrial ecosystems, managing the ocean poses a challenge to conventional management approach that relies on establishing administrative boundaries over transient ocean resources. This is further compounded by the multiple-use nature of the marine environment yielding many complementary and conflicting interactions that can only be effectively balanced through an integrated approach. According to Couper, ocean management is a methodology that views the various ocean uses and environment as a whole and seeks to optimize such uses "in

⁸ Elisabeth M. Borgese, *The Oceanic Circle: Governing the Seas as a Global Resource* (Tokyo: United Nations University Press, 1998), p. 132.

order to maximize net benefits to a nation, but without prejudicing local socio-economic interests or jeopardizing benefits to future generations.”⁹

Structural issues attendant to institutional arrangements for ocean governance are often a consequence of the low priority accorded to ocean affairs in the hierarchy of political and economic priorities of the government.¹⁰ This is usually reflected in the relegation of ocean matters as a peripheral concern attached to the functions of an agency whose primary agenda is not concerned with marine affairs. A related issue concerns the formal structure of government organization for ocean affairs. Traditionally, administrative bodies for ocean and coastal management are organized along specific ocean sectors such as fisheries, shipping, and oil and gas development.¹¹ Sectoral approach in managing ocean uses, however, has been known to be ineffective because of externalities produced by the different users.¹² Such an approach will only be applicable where resources are unlimited and where interaction among users is nonexistent.¹³ With increasing number and level of ocean uses, the inherent limitations of the sectoral approach will no longer be able to cope with the growing complexity of the management problems.

Apart from sectoral management, the establishment of administrative boundaries over the marine space has also contributed to further fragmentation in planning and management of ocean uses resulting to a failure of management to address trans-boundary impacts of activities in the respective management jurisdictions. On account of the multiple uses of the ocean space and their aggregate impact on the marine ecosystems, ocean management must necessarily be integrative in orientation. An

⁹ Alistair D. Couper, "History of Ocean Management," in *Management in Global Change*, ed. Paolo Fabri (London: Elsevier Applied Science, 1992). As cited in Elisabeth Mann Borgese, *Ocean Governance and the United Nations*, Second ed. (Halifax, N.S., Canada: Centre for Foreign Policy Studies, Dalhousie University, 1996), p. 105.

¹⁰ Stella Maris Vallejo, *New Structures for Decision-Making in Integrated Ocean Policy* (United Nations University Press, 1994 [cited May 23 2005]); available from <http://www.unu.edu/unupress/unupbooks/uu15oe/uu15oe00.htm#Contents>.

¹¹ Biliana Cicin-Sain et. al., "Education and Training in Integrated Coastal Management: Lessons from the International Arena," *Ocean & Coastal Management* 43 (2000), p. 293.

¹² Lawrence Juda, "Changing National Approaches to Ocean Governance: The United States, Canada, and Australia," *Ocean Development & International Law*, no. 34 (2003), p. 162.

¹³ Couper, p. 105 and Cicin-Sain et. al., "Education and Training in Integrated Coastal Management: Lessons from the International Arena," p. 293.

integrated approach can be viewed as a practical way of operationalizing the concept of sustainable development, which aims to achieve economic development objectives without compromising ecological integrity and the welfare of present and future generations.

The purpose of establishing a national ocean policy is for the state to exercise its stewardship responsibilities, harmonize existing laws and ocean uses, promote coordination among government agencies concerned with the use of maritime space and resources, and maximize benefits from utilization of ocean resources within sustainable limits.¹⁴ The absence of an ocean policy framework largely explains most of the coordination problems that lead to functional overlaps and duplications among the relevant agencies.¹⁵

The formulation of an integrated ocean policy shall be guided by the principles of integration, precautionary approach, ecosystem-based management, polluter-pays principle, inter- and intra-generational equity, public/private participation, and community-based management.¹⁶ It may include the following components:¹⁷

1. Determination of the extent of the EEZ and continental shelf against opposite and adjacent states.
2. Adaptation of a fisheries management system.
3. Control of land-based marine pollution.
4. Land-use planning.
5. Control of pollution from ships.
6. Development of the chain of ports and shipping services.
7. Regulation of industrial and agricultural activities.
8. Development of off-shore mineral resources.
9. EEZ surveillance and enforcement.
10. Tourism and recreational uses.
11. Establishment of ocean installations and structures.

¹⁴ Biliana Cicin-Sain, *Perspectives on National and Regional Ocean Policies* (Pacific Islands Regional Ocean Forum (PIROF), February 2-6, 2004 at the University of the South Pacific in Suva, Fiji Islands, 2004 [cited May 12 2005]); available from <http://www.spc.int/piocean/forum/Wednesday/3%20Perspectives%20on%20national%20&%20regional%20ocean%20policies%20-%20Biliana%20Cicin-Sain.pdf>.

¹⁵ Vallejo (1994), <http://www.unu.edu/unupress/unupbooks/uu15oe/uu15oe00.htm#Contents>.

¹⁶ Cicin-Sain, *Perspectives on National and Regional Ocean Policies*, p. 5.

¹⁷ Edward L. Miles, "The Concept of Ocean Governance: Evolution Towards the 21st Century and the Principle of Sustainable Ocean Use," *Coastal Management* 27 (1999).

Coordination and integration are central issues of contemporary discourses in ocean management. Coordination is the orderly and harmonized implementation of policies and programs by concerned institutions with the objective of minimizing conflicts among them.¹⁸ Integration refers to the process of balancing and prioritization of competing ocean uses.¹⁹ The integration process should consider two aspects of ocean management:

- (1) The individual and cumulative effects of coastal and ocean resource uses on the marine environment; and
- (2) The negative externalities that coastal and ocean resource users generate toward other users. Addressing these issues would require vertical integration at different levels of governance and horizontal integration encompassing the sector agencies.

Cicin-Sain further clarifies the concept of policy integration:

- (1) Not all interactions between different sectors are problematic and therefore requires management;
- (2) Integrated management should complement sectoral management rather than replacing it;
- (3) Policy integration should take place at the higher bureaucratic level; and
- (4) The costs of integration should be carefully considered as it might outweigh its benefits.²⁰

The observation made by Cicin-Sain on the need for a higher administrative authority to govern ministerial level institutions shares the view of Borgese who, while noting that integration must be made at the inter- and intra-national management spheres, points out that organizational structures in these contexts are basically horizontal in orientation.²¹ This structural framework is known to be ineffective owing to a lack of established system of authority over institutional units who mutually

¹⁸ Jay L. Batongbacal, *Reformulating the National Marine Policy* ([cited April 11 2005]); available from <http://arcoastnews.tripod.com/issue1/htmls/reformulating.htm>.

¹⁹ Ibid.

²⁰ Biliana Cicin-Sain, "Sustainable Development and Integrated Coastal Management," *Ocean and Coastal Management* 21, no. 1-3 (1993). As cited in Elisabeth Mann Borgese, *Ocean Governance and the United Nations*, Second ed. (Halifax, N.S., Canada: Centre for Foreign Policy Studies, Dalhousie University, 1996), p. 106.

²¹ Elisabeth Mann Borgese, *Ocean Governance and the United Nations*, Second ed. (Halifax, N.S., Canada: Centre for Foreign Policy Studies, Dalhousie University, 1996), p. 107.

consider themselves as coequals. Thus, conflicts among agencies are often difficult to resolve due to the absence of an appropriate authority that has a legal mandate to resolve such conflicts. The delays in resolving institutional conflicts may take its toll on the ocean economy due to lost opportunities and even hamper efforts to protect the marine environment. Another important reason is that the task of coordinating with agencies can be done effectively by a cabinet level authority so that the prevailing program inertia could be redirected towards protection and development of ocean and coastal resources.²²

An institutional framework for integrated ocean management must be comprehensive, consistent, trans-sectoral, and participative.²³ "Comprehensive" means that the institutional arrangement provides for a mechanism that establishes a bottom-up linkage from the community to the national and international levels of governance. "Consistency" means that the decision-making processes and mechanisms are vertically well-nested at all levels of governance. "Trans-sectoral" means viewing the ocean activities as a whole with due consideration for the externalities that individual uses have toward each other and the environment rather than treating them as mutually exclusive events. And "participative" imply the adoption of management approach that actively involves stakeholder groups whose means of livelihood have traditionally depended on the resources provided by the ocean. Top-down regulatory approach that characterized conventional resource management has long been known to be ineffective the rules and sanctions regulating resource use are oftentimes not compatible with the political setting, worldviews of the environment, and economic choices that confront resource users.

Ehler et. al. suggests that for a coordinative mechanism to be effective, it has to meet certain requirements.²⁴ Firstly, the coordinative body must be supported by a legislative authority or authorized by the Chief Executive of the country. Second, it must

²² Miles, p. 7.

²³ Elisabeth M. Borgese, *The Oceanic Circle: Governing the Seas as a Global Resource* (Tokyo: United Nations University Press, 1998), p. 133.

²⁴ Charles N. Ehler et. al. (1997). "Guidelines to assist policy makers and managers of coastal areas in the integration of coastal management programs and national climate-change action plans." *Ocean and Coastal Management* **37**(1): 7-27.

have sufficient powers to influence the programs and activities of the agencies that have functional roles over the use of ocean space. Third, the role of the coordinative agency in the development planning process must be viewed by the concerned agencies as part of a legitimate process. Fourth, it should have access to technical expertise and decision-making information through venues that will provide exchange of information with coastal managers, resource users, and natural and social scientists. Finally, it must have a built-in mechanism for periodic review and adjustments.

An interagency coordination mechanism has to perform the following functions:²⁵

1. Provide policy direction and standards for ocean and coastal management.
2. Promote inter-agency and inter-sectoral coordination.
3. Minimize policy conflicts and functional overlaps among agencies.
4. Provide a venue for resolutions of conflicts among stakeholder agencies, sectors, and affected communities.
5. Recommended legislative and policy reforms.
6. Provide regular review, monitoring, and evaluation of accomplishments in the implementation of ocean and coastal management programs.
7. Promote public and private sector participation in policy planning and decision-making.
8. Encourage the marine scientific community to provide multidisciplinary treatment of scientific information as inputs to decision-making.

The attainment of integrated ocean management was analyzed by Vallejo at three functional levels of management.²⁶ At the policy-making level, national experiences have shown that the most effective mechanism for formulating integrated ocean policy and inter-agency coordination is through the establishment of an inter-ministerial body at the highest bureaucratic level led by a minister representing an agency with the closest mandate related the utilization, management, and preservation of marine resources and environment. The coordinative body could promote participation of government and non-government organizations and provide leadership in setting of priority policy objectives.

At the planning level, the national planning authority is charged with an overall responsibility for the formulation and coordination of the national social and economic plan including the utilization and management of the marine sector. The oversight

²⁵ Ehler et. al., p. 16.

²⁶ Vallejo (1994), <http://www.unu.edu/unupress/unupbooks/uu15oe/uu15oe00.htm#Contents>.

function of the planning agency over the line agencies of national government places the national planning body at the most strategic position to establish the operational handles to implement ocean-related programs and projects. It is an incumbent function of the planning agencies to make resource allocation decisions affecting the various agencies of the government. Planning agencies are also in the most suitable position to undertake an objective assessment of competing interests in ocean sector on which to justify prioritization and public investment decisions. Coastal and ocean planning process, however, should not be delimited to the national level planning process considering the greater role that local level institutions play in coastal area management. Policy objectives in both levels, however, must be consistent.

At the implementation level, extant instructional structures should be utilized in carrying out new ocean-related activities.²⁷ In most cases, countries already have institutional mechanisms for ocean policy planning and implementation. Institution-building efforts should focus more on improving the decision-making and communication process where, in most situations, the creation of new institutions is not necessarily the best solution. Second, there must adequate resources available to the institutional structure so that it can effectively deliver the expected output. The lack of expertise and technical capacity to address marine issues, conduct marine scientific research, information systems for planning and management, and adequate funding can seriously affect the capacity of the institutional structure to perform effectively. Third, decision-making mechanisms must be established to take into account the environmental and socio-economic linkages between coastal and marine area and formulate the appropriate strategies to address such linkages. Vallejo also emphasized the importance of bringing ocean affairs into the public policy agenda to encourage the formulation of an integrated ocean policy, and the incorporation of ocean policy objectives and priorities therein into the national development planning.

International approaches to ocean governance have been widely varied with differing outcomes. Coastal states have embarked on a path of continuous search for

²⁷ Vallejo (1994), <http://www.unu.edu/unupress/unupbooks/uu15oe/uu15oe00.htm#Contents>.

the appropriate model best-suited to their political, social, economic, and ecological realities. A study by Cicin-Sain noted that in the year 2000, about 46 percent of coastal states have put coastal-related laws in place with 42 percent of them reporting that some form of a coordinative mechanism has been established to deal with ocean and coastal affairs. The specific approach that countries have adopted, however, have been varied and designed to suit their particular needs. A study commissioned by the Asia-Pacific Economic Cooperation (APEC) reports that APEC coastal states have responded to the opportunities offered by the LOSC and have take up the challenge of managing their respective marine resources and maritime jurisdictions. There are four types of approaches emerging from the current practice by coastal states in the APEC region.²⁸ In the first approach, integration of ocean concerns is lodged at a central planning agency or similar authority at the ministerial level. Under this arrangement, inter-ministerial coordination committees or cabinet committees are established to address ocean management conflicts. The second approach maintains a status quo on existing administrative and legislative mechanisms. In this case, harmonization of ocean policy objectives and strategies is attained through a regional planning process leading to the adoption by the concerned sectors of commonly accepted national goals and principles. The third approach is a legislative-led action where a single agency, through a national legislation, is identified to develop a national ocean policy. The fourth approach involves the creation of a single agency whose main responsibility is the integration of ocean concerns. There is apparently no single model of ocean governance that would work in all countries but they offer abundant information that other countries can draw lessons from.

²⁸ Centre for Maritime Policy. *Integrated Ocean Management in the APEC Region – Report of APEC Project MRC 01/2002*, (Wollongong: University of Wollongong, Australia, 2002).

III. Philippine Ocean Economy and Environment: An Overview

Maritime Territory

The Philippines is an archipelago situated in Southeast Asia between Taiwan in the north and by Indonesia and Malaysia in the south. The country has approximately 7,100 islands stretching 1,840 kilometers from north to south covering a land area of about 298,170 sq. km.²⁹ The total length of its coastline is about 17,460 kilometers, with an Exclusive Economic Zone of about 2.2 million km² of which about 266,000 km² are coastal or municipal waters and the rest are classified as oceanic zone (Table 1). Fifty-five percent (832) of the country's 1,500 municipalities and almost half (57) of the 117 cities are situated along the coast.³⁰ More than 80 percent (64) of the 79 provinces likewise have coastal domains.³¹ In 2000, 60 percent of the 64.7 million people in coastal provinces were living within the coastal zone.

Table 1. Philippine Marine Resources, 2003

1. Total Marine Waters Area (including the EEZ)	220,000,000 ha.
a. Coastal	26,600,000 ha.
b. Oceanic	193,400,000 ha.
2. Shelf Area (Depth 200 m.)	18,460,000 ha.
3. Coral Reef Area	27,000 sq.km.
4. Coastline (Length)	17,460 km.

Source: Fisheries Statistics of the Philippines 2001-2003, DA-BAS

Coral Reefs and Mangroves

Coral reef areas in the Philippines span an area of about 27,000 km² mostly within 30-meter depth. Reef areas significantly contribute to marine fisheries production

²⁹ Department of Environment and Natural Resources/United Nations Development Programme/Marine Environment and Resources Foundation, Inc. "ArcDev: A Framework for Sustainable Archipelagic Development," (2004), p. 9.

³⁰ Department of Interior and Local Government, *Local Government Units Section* (2005 [cited August 7 2005]); available from <http://www.dilg.gov.ph/index.cfm?FuseAction=lgu.statistics>; Department of Environment and Natural Resources, "Proposed National Coastal Resources Management Policy (NCRMP) for the Philippines (CRMP Document No. 26-CRM/2000)," DENR (2001).

³¹ Ibid.

generating between 5 to 37 tons per sq. km.³² In the East and Southeast Asian region, the Philippines accounts for 26 percent of the coral reefs and represent 29 percent of the threatened reefs next to Indonesia with 51 percent of the coral reefs and 50 percent threatened.³³

Figure 2. Coral reefs at risk in the Philippines



There were about 915 reef species identified in the Philippines and at least 400 scleractinian or hard corals species of which 12 are endemic in the country.³⁴ Destructive reef fishing methods (e.g. "muro-ami," blast and cyanide fishing) are the main causes of coral reef degradation, as well as the unabated practice of blast fishing have all contributed to the loss of an estimated 70% coral reef cover within the 15-kilometer zone of the coastal waters.³⁵ Unregulated coastal development and mangrove forests

³² N.C. Barut, M.D. Santos and L.R. Garces, "Overview of Philippine Marine Fisheries," in *In Turbulent Seas: The Status of Philippine Marine Fisheries* (DA-BFAR (Department of Agriculture-Bureau of Fisheries and Aquatic Resources) Coastal Resource Management Project, Cebu City, Philippines, 2004).

³³ Liz Selig (WRI), Lauretta Burke (WRI), and Mark Spalding (UNEP-WCMC, Cambridge, UK). *Chapter 5. Status of Coral Reefs in Southeast Asia* (2002 [cited August 8 2005]); available from http://pdf.wri.org/rseasia_chap5.pdf.

³⁴ Id. (2002 [cited August 8 2005]); available from http://biodiv.wri.org/pubs_content_text.cfm?ContentID=107.

³⁵ Ibid.

conversions for fishpond development, which led to the loss of 80 percent of the mangrove forests, have all contributed to the increased flow of sedimentation contributing to coral reef destruction.³⁶

About 80 percent of the coral reefs in the Philippines are still vulnerable to threats posed by overfishing and destructive fishing (Figure 1).³⁷ At least 70 percent of the coral reefs are still at risk from blast and cyanide fishing and about 40 percent continue to be affected by sedimentation and pollution from foreshore development and agriculture.³⁸ Measures to penalize the destructive fishing methods and use of deleterious substances are already in place but enforcement appears to remain inadequate if not ineffective.³⁹

Mangroves play important functions in the coastal ecosystem. They serve as barriers against coastal flood and prevent erosion of the foreshore land. Mangrove forests also provide protection from tidal disturbances creating a suitable environment for breeding and as fish habitat.

The Philippines has about 41 mangrove species. Mangrove cover, however, has been significantly reduced due to conversion of mangrove forests into fishponds, which is partly attributed to state promotion of aquaculture. Steps have been taken to reverse this trend by suspending permits for mangrove conversion to fishponds and reversion of idle fishponds into mangrove forests. Community-based management of coastal resources including mangroves is an approach actively promoted by the national government.

Offshore Oil and Gas

The Philippine government actively promotes the exploration and development of offshore oil and gas resources pursuant to its policy of attaining energy independence.

³⁶ Ibid.

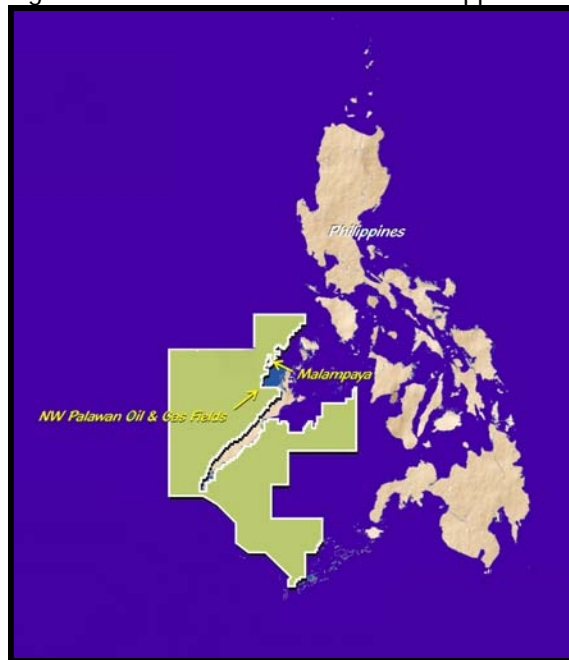
³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

Domestic crude oil production amounts only to 25,000 barrels per day (bbl/d) representing less than 10 percent of the country's average daily consumption. The average national fuel consumption is about 338,000 bbl/d of which 312,000 bbl/d is imported.⁴⁰ As a net crude oil importer, the Philippine economy is highly vulnerable to fluctuating and rising international oil market prices recently reaching a record high of US\$ 65/barrel.⁴¹ With the adoption of liberalization policy in the petroleum industry, which led to the removal of fuel subsidies, the inflationary effect of rising crude oil prices has become inevitable. It is thus the policy of the government to develop the natural gas sector to reduce dependence on imported fuel.

Figure 3. Oil and Gas Fields in the Philippines



Source: Department of Energy

A vital element of the strategy is the cooperation with other states in conducting joint exploration activities. Quite recently, the Philippine government has entered into a three-year agreement with the China National Offshore Oil Company to jointly explore

⁴⁰ United States Energy Information Administration, *Philippine Country Analysis Brief* (2004 [cited August 8 2005]); available from <http://www.eia.doe.gov/emeu/cabs/philippi.html>.

⁴¹ CNN, *Crude Touches Another Record, Breaks \$65: Oil Rallies Despite EIA Report That Shows Crude and Distillate Inventories up More Than Expected*. (2005 [cited August 11 2005]); available from <http://money.cnn.com/2005/08/10/markets/oil/index.htm>.

the petroleum resource potential of some areas of the South China Sea.⁴² A separate agreement between China, Philippines, and Vietnam was also concluded this year for a joint survey of the Spratlys.⁴³ Other state claimants thus far have not officially expressed disagreement over their non-inclusion in the joint exploration activities. The continuing unresolved territorial dispute over the Spratlys island group may undermine such cooperation activities; hence, expeditious resolution of maritime boundary disputes should be pursued.

Table 2. Power Generation by Source, 2004

	In Gwh	%
Oil-Based	8,504	15.2%
Oil-Thermal	1,431	
Diesel	6,253	
Gas Turbines	821	
Hydro	8,593	15.4%
Geothermal	10,282	18.4%
Coal	16,194	28.9%
Natural Gas	12,384	22.1%
Total	55,957	100%

Source: Department of Energy (2005)

Philippine natural gas resources discovered are estimated to have recoverable reserves of 2.5 trillion cubic feet (TCF) of gas and some 85 million barrels (MMB) of condensate.⁴⁴ Most of the discovered resources are located in the Camago-Malampaya gas fields off western Palawan where a total of 5 five wells have been built since 1991 (Figure 2). Natural gas deposits in the Camago-Malapampaya fields were determined to be capable of supporting at least 3,000 MW gas-fired power plants over a period of more than 20 years.⁴⁵ This will replace an estimated 26 million barrels of fuel oil

⁴² Chapter 10, *Medium Term Philippine Development Plan 2004-2010* (2004 [cited August 8 2005]); available from http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx10_Energy.pdf.

⁴³ "Chinese Premier Urges Joint Oil Exploration of Spratlys," *Philippine Daily Inquirer*, July 4, 2005.

⁴⁴ J.V. Emmanuel De Dios, *Developing the Philippine Natural Gas Industry* (2005 [cited August 8 2005]); available from http://www.doe.gov.ph/nat_gas/default.htm.

⁴⁵ Guillermo R. Balce, D.Sc. and Eric F. Pablico, *Philippine Natural Gas Resources: Maximizing Their Potential* (1998 [cited August 8 2005]); available from http://www.doe.gov.ph/nat_gas/Reports.htm.

demand.⁴⁶ In 2001, Shell Philippines Exploration B.V. (SPEX) in consortium with Chevron Texaco and PNOC-EC have completed a 504-kilometer pipeline to three onshore power plants with combined capacity of 2,760MW equivalent to 19 percent of the country's installed capacity in 2002.⁴⁷ In 2003, San Antonio and Malampaya gas fields have generated a combined output of 94,802.9 million cubic feet (MCF) and a condensate production of 4.9 million barrels (MMB).⁴⁸ The most recent data show that 22 percent of the total power generated in the country comes from natural gas second only to coal (Table 2).

Some estimates suggest that despite the projected 3.2 million tons of natural gas annual production from the Malampaya gas fields, deficiency in natural supply would reach up to 1 and 1.7 million tons in 2010 and 2015, respectively.⁴⁹ Currently, natural gas is used only for electricity generation but industrial use may begin before the end of the decade. The projected increase in demand with the prohibitive costs of offshore explorations and long distance pipeline distribution may require the country to import a portion its total requirement when importation of liquefied natural gas (LNG) becomes a more efficient option.

Marine Fisheries

Philippine marine fisheries are categorized into two sub-groups: municipal fisheries and commercial fisheries. Municipal fishing refers to fishing activities within the municipal waters with the use of fishing vessels not exceeding 3 gross tons and any fishing activity that does not require the use of a fishing vessel. Municipal fisheries also include all aquaculture activities including brackishwater and freshwater fishponds, and marine cages in the nearshore areas. Commercial fishing, on one hand, refers to fishing activities using fishing vessels with capacity above 3 gross tons. The regulation of municipal fisheries is the responsibility of the city or municipal government while

⁴⁶ United States Energy Information Administration (2004).

⁴⁷ *Chapter 10, Medium Term Philippine Development Plan 2004-2010* (2004 [cited August 8 2005]); available from http://www.neda.gov.ph/ads/mtdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx10_Energy.pdf.

⁴⁸ Ibid.

⁴⁹ ABARE Research Report 04.1, *Philippine Natural Gas Sector* (2004 [cited August 8 2005]); available from http://www.abareconomics.com/research/energy/LNG_pdfs_final/LNG_pdf_Section3/LNG_3_ThePhillipines.pdf.

commercial fisheries outside the municipal waters is managed by the Bureau of Fisheries and Aquatic Resources. Commercial fishing may be permitted by a local government within 10.1-15km area from the coastline with at least 7 fathoms depth.

Table 3. Volume and Value of Production by Sector, Philippines, 2001 – 2004

SECTOR	2001	2002	2003	2004*
VOLUME ('000 MT)				
ALL SECTORS	3,167	3,370	3,619	3,926
COMMERCIAL	977	1,042	1,110	1,128
MUNICIPAL	970	989	1,055	1,081
Marine	833	857	922	939
Inland	136	132	133	142
AQUACULTURE	1,220	1,338	1,455	1,717
VALUE (Million US\$) **				
ALL SECTORS	1,944	2,059	2,179	2,524
COMMERCIAL	656	721	764	879
MUNICIPAL	622	694	739	830
Marine	569	633	674	748
Inland	53	61	65	82
AQUACULTURE	666	644	676	815

* 2004 figures from 2005 Selected Statistics of Agriculture (BAS) ** US\$1 = P55

Compiled from: Fisheries Statistics of the Philippines 2001-2003, DA-BAS

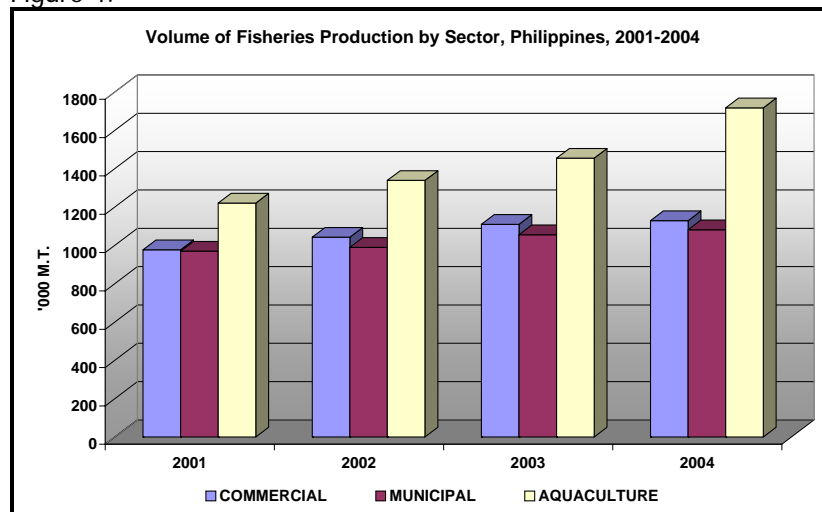
In 2002, the fishery sector contributed 4.1 percent to the country's Gross Domestic Product (GDP) valued at US\$815 million at constant (1985) prices.⁵⁰ Fishery exports in 2002 amounted to US\$506 million chiefly comprising tuna (US\$145 million), shrimp/prawn (US\$141 million), seaweeds (US\$73 million), and miscellaneous fishery export (US\$147 million).⁵¹

⁵⁰ National Statistics Office, *NSO Report on Fisheries Census* (2005 [cited July 28 2005]); available from http://www.oneocean.org/overseas/200507/nso_report_%20on_%20fisheries_census.html. (US\$ 1 = P55)

⁵¹ Department of Environment and Natural Resources-Bureau of Fisheries and Aquatic Resources, *BFAR Fisheries Profile* (2005 [cited July 19 2005]); available from http://www.dfar.da.gov.ph/Publications/external_trade_files/external_trade1.htm.

Municipal fisheries dominates the Philippine fisheries in terms of employment and number of fishing operators. The 2002 Census of Fisheries indicates that there were about 1.8 million municipal and commercial fishing operators, a 200 percent increase from 1980 figure of only 584 thousand fishing operators.⁵² There were about 1.781 million operators engaged in municipal fishing while only 7.8 thousand were involved in commercial fishing.⁵³ In the municipal fisheries sector, 98.4 percent (1.752 million) were individual fishing operators, the rest were operating under partnership arrangements.⁵⁴ In the case of commercial fisheries, 99.86 percent (7.19 thousand) is under individual proprietorship and only 0.05 percent (368) is under a partnership.⁵⁵ The municipal fisheries employed about 1.1 million fisherfolk majority of whom are conducting their own fishing operation (86.3 percent), others work for other fishing operators (7.9 percent), or a combination of both (5.8 percent).⁵⁶ Commercial fisheries employed only 4.95 thousand individuals, with 4.2 thousand engaged in own fishing operation.⁵⁷

Figure 4.



Source: BAS, 2005

In terms of volume, aquaculture made the highest contribution to total fisheries output with output of 1.7 million tons while commercial and municipal fisheries have

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

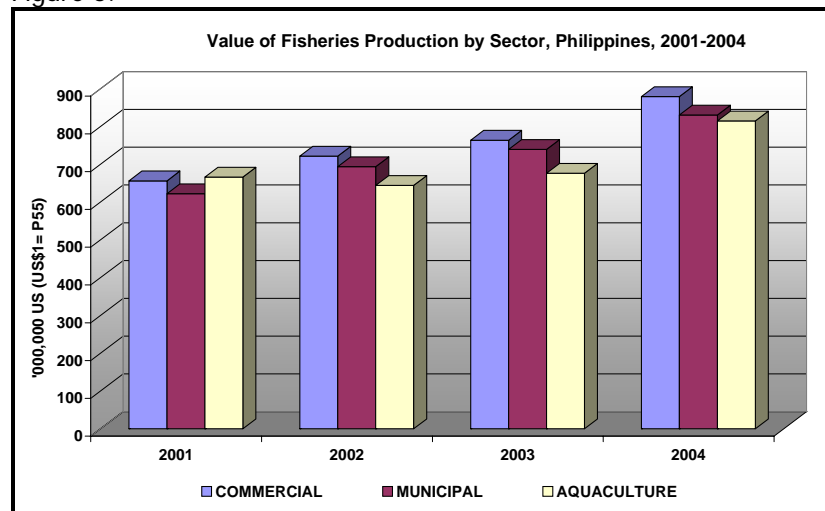
⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

each generated at least 1 million tons in 2004 (Table 3). In terms of value, aquaculture output is valued at US\$ 815 million just slightly behind commercial fisheries and municipal fisheries production, which are valued at US\$ 879 million and US\$ 830 million, respectively (Figure 4). About 68 percent (2003) of aquaculture production were raw and semi-processed seaweeds for export; brackishwater fishponds contributed only about 17 percent. Conversely, brackishwater fishponds represent 65 percent of the total value of aquaculture output while the share of seaweeds production is only at 10 percent.⁵⁸

Figure 5.



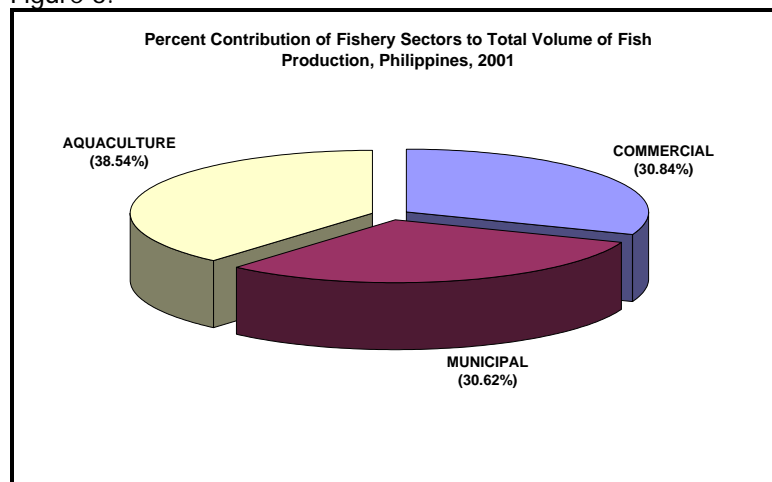
Source: BAS, 2005

Commercial and municipal fisheries has consistently generated positive growths since 2001 and slightly declined in 2004 at only 2 percent compared to 6 percent in the previous year (Figure 3). Overall, fishery sector productivity increased by 8.5 percent (2004) largely attributed to the robust performance of the aquaculture sector with an average increase of 18 percent (2004) from its 9-10 percent level in 2002-2003. The aquaculture output have captured a larger share of the total fisheries production from only 38 percent in 2001 to almost 44 percent in 2004 (Figure 5 and 6). The aquaculture sector is clearly the main driver of growth in the fishery sector and will likely surpass the performance of commercial and municipal fisheries in the next few years.

⁵⁸ Fisheries Statistics of the Philippines 2001-2003, DA-BAS

Marine fisheries production data of 1994 indicate that small pelagic fisheries consisted mostly of the fish catch representing 53% (885,000 tons) of the total production followed by tuna fisheries (18%), demersal fisheries (17%), and other fish species (12%).⁵⁹ Fisheries statistics for the period 1970 to 1994 indicate that demersal fisheries production has plateaued since 1976 while small pelagic fisheries experienced a rapid increase during 1988-1992 and has been consistently declining since then.⁶⁰ This downward trend in commercial and municipal fisheries output growth deserves serious attention to develop the appropriate policy response to avert a possible fishery collapse.

Figure 6.



Source: Fisheries Statistics of the Philippines 2001-2003, BAS, 2005

Previous studies reveal that demersal and small pelagic stocks are being exploited beyond sustainable levels both biologically and economically.⁶¹ It is also established that the level of fishing effort has been high in the nearshore fishing grounds where the situation is further worsened by user-group conflicts between commercial and municipal fishing sectors. Reduction of fishing effort, however, should consider the equity impact of such intervention in view of the fact that there are more fishing households whose incomes rely on municipal fishing rather than commercial fishing.⁶²

⁵⁹ Barut et. al. (2004)

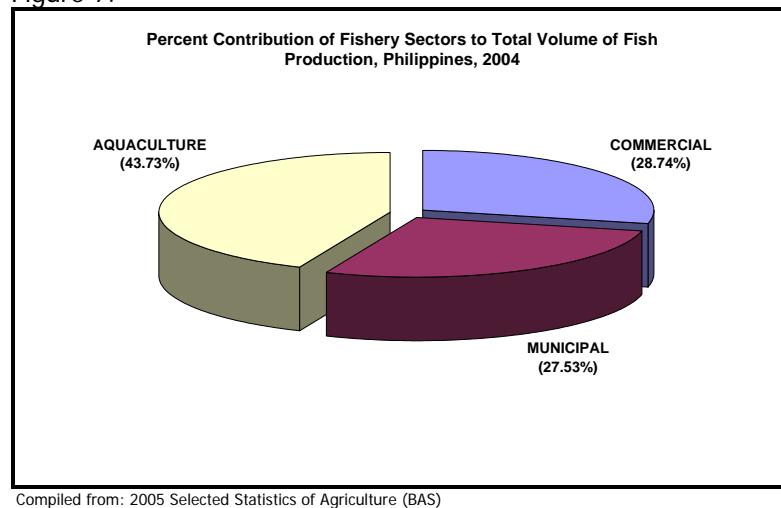
⁶⁰ Id., p. 29.

⁶¹ Id., p. 28-29.

⁶² Id., p. 29.

Competition between commercial fishing and municipal fishing for nearshore fishery resources could be attributed to certain incentives offered by lower operational costs for nearshore operations and the relatively abundant fishery resources within and adjacent to the municipal waters. Despite the fact that the oceans area is 14 times larger than the coastal waters, commercial fisheries production had been almost just about the same level as the average production of the municipal fisheries sector (see Table 1). Studies show that tuna fishing operations have been geographically limited and there are suggestions for expansion of commercial fishing operations further offshore to increase production and increase exploitation of currently underutilized ocean large pelagics (e.g. marlin, swordfish, and sailfish).⁶³ The Fisheries Code addresses this problem by encouraging investments in offshore commercial fishing industry through credit facilities and tax incentives but achieving this outcome thus far remained elusive. Effective enforcement of fishery laws and local ordinances may also help dissuade commercial fishing intrusion into municipal waters.

Figure 7.



Marine Transportation

Inter-island shipping in the Philippines provides the most economical mode of transporting goods and people between the islands of the archipelago. The domestic

⁶³ Ibid.

merchant fleet in the Philippines is mainly consist of cargo vessels (28.6%) and passenger-cargo vessels (26.3%) with average ages of 15 and 11 years old, respectively (Table 4).⁶⁴ The country's ageing inter-island fleet consists of secondhand vessels imported mostly from Japan. Importation of secondhand vessels is a practice that has contributed to the country's poor maritime safety record.

Table 4. Domestic Shipping Fleet, Philippines, 2000

Type of Service	No. of Vessels	%	Total GRT	Average GRT	Average Age
Passenger ferry	283	5.7%	14,480	51.17	11.04
Passenger-cargo	1,297	26.3%	446,109	344.22	9.48
General Cargo	1,409	28.6%	523,391	371.99	14.56
Container	27	0.5%	71,896	2,662.82	22.24
Liquid Cargo/Lighterage	31	0.6%	12,725	410.5	18.26
Barging	153	3.1%	84,890	554.84	17.24
Tanker	198	4.0%	176,951	893.69	16.54
Towing/Salvage	437	8.9%	36,449	83.6	19.9
Pleasure	90	1.8%	2,032	22.59	8.62
Pilotage	9	0.2%	126	14.03	30.25
Others	996	20.2%	40,797	41.16	7.42
No Information	1	0.0%	14	14.5	10
TOTAL	4,931	100.0%	1,409,864	286.85	12.89

Source: MARINA

A study on maritime safety for the period 1990-1996 indicates that there was a high incidence of maritime accidents in the country at an annual average of 141 incidents mostly involving capsizing, sinking and grounding of vessels (Table 5).⁶⁵ The Philippines', if not the world's, worst maritime accident happened in 1987 when a passenger ship Doña Paz collided with a tanker resulting to the loss of at least 4,000 passengers.⁶⁶ The latest maritime disaster in the Philippines occurred in 1998 involving a 14,000-ton passenger ship capable of carrying 3,000 passengers that sank due to strong winds with 430 passengers onboard⁶⁷. The Philippines have yet to designate

⁶⁴ MARINA, *The Domestic Shipping Industry of the Philippines: A Situation Report (2003)* (2003 [cited August 10, 2005]); available from <http://www.marina.gov.ph/report/domestic/domestic2003.doc>.

⁶⁵ MARINA, *Maritime Safety in the Philippines* (1997 [cited August 10 2005]); available from <http://www.marina.gov.ph/report/safety/Default.htm>.

⁶⁶ CNN, *Philippine Officials Puzzle over Cause of Ferry Disaster* (September 19, 1998 [cited August 10 2005]); available from <http://www.cnn.com/WORLD/asiapcf/9809/19/philippines.ship.04/>.

⁶⁷ Ibid.

archipelagic sealanes for foreign ships and implement a vessel traffic management system to prevent collision and grounding of ships.

The lack of domestic capacity for shipbuilding and ship repair has been attributed to the general lack of government support, lack of incentives for investment, higher local production costs favoring importation of secondhand vessels, lack of technical capacity and access to shipbuilding and repair technology, and obsolete shipyard facilities.⁶⁸

Table 5. Maritime Accident Report, 1990-1996

Type of Accident	1990	1991	1992	1993	1994	1995	1996
Aground	104	27	26	26	23	58	19
Drifted/Engine Trouble	61	29	30	27	24	13	9
Fire	10	10	16	11	18	23	6
Collision	27	5	13	12	13	17	5
Capsized	87	39	44	41	37	33	32
Sank	117	28	51	45	35	37	35
Missing	50	17	16	11	13	0	0
Rammed	0	0	0	0	0	0	10
Flooding	0	0	0	0	0	0	3
TOTAL	456	155	196	173	163	181	119

Source: MARINA

The focus of the national government at the present is the promotion of the roll-on roll-off (RORO) system to facilitate inter-island movement of people and goods. On one hand, shipping companies have claimed that they are currently constrained by the policies of Maritime Industry Authority and Philippine Ports Authority to expand their services in short-haul routes. Some shipping companies have also suggested that port infrastructure development and services should be privatized to hasten the development of ports that are capable of handling large container cargoes and tourist arrivals. The lack of modern ports will likely be unable to accommodate the growing volume of cargo and passengers in the next decade.

⁶⁸ MARINA, *Shipbuilding and Ship Repair (SBSR) Sector: A Situation Report 1999-2004* (2004 [cited August 10 2005]); available from http://www.marina.gov.ph/report/sbsr/SBSR_SituationerReport_2004.DOC.

IV. Policy Framework for Philippine Ocean Management

Philippine Constitution (1987)

The 1987 Constitution provides general policies for the utilization and management of natural resources and the protection of the environment. The most basic element is the definition of the extent of Philippine territory in Article I:

“The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.”⁶⁹

Despite its ratification of the LOSC in 1984, the Philippines has not fully complied with the prescriptions of the LOSC particularly with regard to the application of the regimes for archipelagic and internal waters.

The Constitution also provides that the marine resources within Philippine sovereignty and jurisdiction are intended for preferential use by its citizens:

“The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.”⁷⁰

Philippine claims for the Continental Shelf and EEZ were established under Proclamation No. 370 (1968) and Presidential Decree No. 1599 (1978). The laws assert the sovereign rights of the Philippines for the purpose of exploration, exploitation, conservation, and management of living and non-living resources in both maritime zones, including the seabed, subsoil and the superjacent waters in the EEZ subject to international freedoms of navigation and overflight by foreign states. The outer limits of

⁶⁹ Art. I, 1987 Philippine Constitution (underscore supplied)

⁷⁰ Par. 2, Sec. 2. Art. XII, Id.

the EEZ and Philippine claim for an extended Continental Shelf have yet to be determined. This largely depends on the successful passage of House Bill 01973 (2004) which aims to define the archipelagic baselines of the country in conformity with the 1982 LOSC and amend the baselines law previously established under Republic Act 3046 (1961) and Republic Act 5446 (1968).

Section 7, Article XIII of the Constitution provides for protection of the interests of small-scale fishing sector and safeguard against infringement of such rights by foreign persons or entities:

“The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.”⁷¹

Local Government Code (LGC) of 1991

The enactment of the LGC, also known as Republic Act 7160, operationalized the principles of political autonomy and decentralization principles enshrined in the Philippine Constitution. The 1987 Constitution provides the basis for state responsibility in managing and protecting the environment:

“The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”⁷²

Section 25, Article II of the Constitution upholds the political autonomy of local governments.⁷³ On the basis of this principle, the LGC confers certain powers and

⁷¹ Sec. 7, Art. XIII, Id. (underscore supplied)

⁷² Sec. 16, Art. II, Id. (underscore supplied)

responsibilities to the local government units (LGUs) including the exclusive utilization of the marine resources within the municipal waters, enactment of local ordinances for revenue-generation (e.g. fishery license fees), and capacity to enter into cooperative undertakings with other LGUs on concerns that are mutually beneficial to them.⁷⁴ The potential for cooperation among LGUs lend to better integration in coastal management by addressing the management limitations created by the establishment of administrative boundaries on marine waters where environmental interactions are fluid and transcend such boundaries.

National agencies whose functions require the implementation of programs and projects are obliged to conduct consultations with the concerned local government units, non-government organizations, and people's organizations prior to the implementation of a program or project within their jurisdiction.⁷⁵ National agencies have to coordinate with the LGUs in both planning and implementation phases of the project.⁷⁶ Government programs/projects that would potentially cause adverse impacts such as environmental pollution or resource depletion demand for the implementing agencies to develop measures to prevent or mitigate such impacts.⁷⁷ Any project, without any exception, cannot proceed in the absence of an express approval by the municipal legislative council.⁷⁸

The scope of the coastal waters over which the LGU has jurisdiction is defined in Paragraph 23, Article 131 of the LGC:

"Municipal Waters" includes not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from

⁷³ Sec. 25, Art. II, Id.

⁷⁴ Sec. 33 and 149(a), RA 7160

⁷⁵ Sec. 2(c), RA 7160

⁷⁶ Sec. 25 (b), Id.

⁷⁷ Sec. 26, Id.

⁷⁸ Sec. 27. Id.

it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of the perspective municipalities.

Within the municipal waters, coastal LGUs have the duty to protect the coastal environment and are empowered to establish legislative powers to regulate certain types of coastal activities and methods which may adversely affect ecological balance.⁷⁹ In addition, coastal municipalities exercise the exclusive authority to grant fishery privileges including the installation of fish cages; impose certain restrictions on certain types of species and gears; and issue licenses to fishing vessels with capacity not exceeding 3 gross tons. These regulatory powers of the LGUs are supportive of the goal of providing the marginal fishermen with preferential access to the coastal resources.

The LGC also provides that the LGUs must share with the national government the responsibility of environment protection.⁸⁰ At the local level, the LGC gave the LGUs the primary responsibility in managing the municipal waters. This huge management responsibility requires technical capacity for developing municipal environmental ordinances and formulation of coastal resource management plans, enforcement capability, and resources to establish coastal resource management units.

The impact of nationally implemented coastal resource management (CRM) programs had been limited since only those that were included as project sites benefited from capacity-building programs. The absence of a national CRM policy has led to uncoordinated implementation of technical assistance programs causing duplication of agency services and differing coastal management strategies.

The Philippine Fisheries Code of 1998

The Philippine Fisheries Code of 1998 or Republic Act 8550 consolidated all fishery-related legislation. The general policies of the law are to protect the rights of the

⁷⁹ Par. 1, Sec. 447, RA 7160

⁸⁰ Sec. 3 (i), Id.

Filipino people to exclusively benefit from the fishery resources; ensure the sustainable development, management, and conservation of the fishery resources in the Exclusive Economic Zone and the adjacent high seas; ensure preferential rights of the fishermen to the fishery and aquatic resources municipal waters and provide state protection against foreign intrusion; manage fishery and aquatic resources based on integrated coastal area management; and regulate fishery access and effort with the application of regulatory instruments based on, but not limited to, Maximum Sustainable Yield (MSY) and Total Allowable Catch (TAC).⁸¹

The Fisheries Code established clearly the jurisdiction of coastal cities and municipalities over the municipal waters consistent with the decentralization policy pursuant to the Local Government Code.⁸² The Fisheries Code mandates the LGUs to enforce all national fishery laws and regulations and retains its legislative powers to enact ordinances for the purpose of prohibiting or limiting fishery, impose licensing fees, and establish fishery reserves and sanctuaries, closed seasons, and catch limitations.⁸³ The LGUs are also required to establish and maintain a registry of fisherfolk and fishing vessels for the purpose of regulating access to fishery and protect the preferential rights of the registered municipal fisherfolk.⁸⁴

The Fisheries Code also established mechanisms for consultation and coordination in formulating and enforcement of fishery regulations. The Bureau of Fisheries and Aquatic Resources (BFAR) is designated to provide assistance in the establishment of the City/Municipal Fisheries and Aquatic Resources Management Council (C/MFARMC). C/MFARMC is a consultative body comprising representatives from the municipal government, civil society, private sector, and municipal fisherfolk and people's organizations. Among its functions are to assist in the formulation of the Municipal/City Fisheries Development Plan; recommend regulatory measures related to controlling fishery access; determine the appropriate license fees, closes seasons, and catch ceilings; and provide recommendations regarding authorization of commercial

⁸¹ Sec. 2, RA 8550

⁸² Sec. 4(8) and Sec. 16, Id.

⁸³ Sec. 6, 8, 16, 23, 80-81, Id.

⁸⁴ Sec. 17 and 19, Id.

fishing within the municipal waters and establishment of fishery reserve, sanctuary, and refuge.⁸⁵ Under the Fisheries Code, coastal LGUs are required to identify and designate at least 15% of the municipal waters under their jurisdiction as fishery sanctuary.⁸⁶ Marine protected areas, however, established under existing legislation and those areas proclaimed as such by the President will remain under the management of specified agencies.⁸⁷ In the case of contiguous fishery resources, coastal cities or municipalities are encouraged to manage the shared resources as a single resource system consistent with the principles of integrated resource management.⁸⁸

BFAR is also mandated to provide assistance for the purpose of strengthening LGU capacity to enforce both national and local fishery regulations.⁸⁹ The LGUs are required to consult with BFAR on matters related to the establishment of closed season, catch ceiling, commercial fishing, and establishment of fishery reserve, sanctuary, and refuge within the municipal waters.⁹⁰ In addition, the Fisheries Code also grants fishery enforcement powers to other enforcement agencies including the law enforcement officers of BFAR, the Philippine Navy, Philippine Coast Guard, Philippine National Police (PNP), PNP-Maritime Command, and law enforcement officers of the LGUs (including local officials and employees, *barangay* officials, and members of fisherfolk organizations) deputized as fish wardens by BFAR.⁹¹ The effectiveness of having multiple institutions involved in fishery law enforcement has yet to be proven since specific agency responsibilities and respective zones of jurisdiction for apprehension and processing of violations have yet to be defined.

A section of the Fisheries Code is devoted to the management and promotion of commercial fisheries beyond the municipal waters including the EEZ. Commercial fishing license is only issued to Filipino citizens and organizations where domestic equity is at

⁸⁵ Sec. 74, Id.

⁸⁶ Ibid.

⁸⁷ Sec. 81, Id.

⁸⁸ Sec. 16, Id.

⁸⁹ Rule 3.1 and 124.1, Department of Agriculture Administrative Order No. 3, series of 1998 (Implementing Rules and Regulations of the Philippine Fisheries Code).

⁹⁰ Sec. 8, 9, 18, 80-81, RA 8550

⁹¹ Sec. 124, Id.

least 60 percent.⁹² Regulation of commercial fishing operation involves a registration requirement for fishing vessels and licensing of fishing gears.⁹³ Philippine commercial fishing vessels may conduct fishing operations beyond the Philippine EEZ in the international waters or of others who permit such fishing operation. Philippine commercial fishing vessels are required to satisfy safety and manning requirements under existing Philippine laws. In addition, fish caught within those waters will be considered as though they were caught within Philippine waters thus, not subject to import duties and other taxes.

The Fisheries Code also provides for the promotion of municipal fishing (using vessels with 3 gross tons capacity or less) and small-scale commercial fisheries (3.1 gross tons to 20 gross tons) through provision of credit facilities allocated from existing government financing agencies to the fisherfolk for the purpose of developing post-harvest infrastructure and market promotion strategies. Large-scale commercial fishing is also encouraged through incentives including long-term loans for vessel and equipment acquisition and various tax incentive packages.⁹⁴

The Philippine Agenda 21

The Philippine Agenda 21 (PA 21) is the country's national action plan for sustainable development.⁹⁵ The strategy was formulated in response to the UNCED Agenda 21 adopted at the 1992 Rio Earth Summit calling for international commitment and cooperation to achieve economic development and address pressing global environmental issues both at the national and international spheres.

PA 21 builds on the principles of empowerment particularly on the roles of the major stakeholder groups, including the government, civil society, labor, and business, in the achieving equitable growth, participate governance, and clean environment. PA 21 outlines ecosystem-based strategies while acknowledging interactions across

⁹² Sec. 27, Id.

⁹³ Se. 28-29, Id.

⁹⁴ Sec. 35, Id.

⁹⁵ Philippine Council for Sustainable Development, *Philippine Agenda 21* ([cited April 11, 2005]); available from <http://pcsd.neda.gov.ph/pa21.htm>.

ecosystems. The strategy adopts an integrated island development approach consistent with the archipelagic configuration of the country.

Among the issues identified in PA 21's Coastal and Marine Ecosystem section are the lack of coordination among national agencies, conflicting policy issuances from sectoral agencies, and lack of harmony among the various uses of the coastal zone. It raises the issues of lack of enforcement capacity both at local and national levels and the slow adjudication process of fishery law violations. The strategy also calls for achieving social and economic development in the community through provision of affordable credit, development of rural livelihood opportunities, facilitation of access to basic social services and infrastructure, and promotion of equitable access to coastal resources. Some of the policy targets identified remain relevant today even after almost a decade since the adoption of PA 21 in 1996. For instance, the following action agenda have not been fully implemented: the updating of the National Marine Policy to harmonize domestic policies with the 1982 LOSC, adoption of coastal zone management plans at the national and local level, implementation of Monitoring, Control, and Surveillance System, and formulation of action plans to abate the impacts of land-based activities to the marine environment.

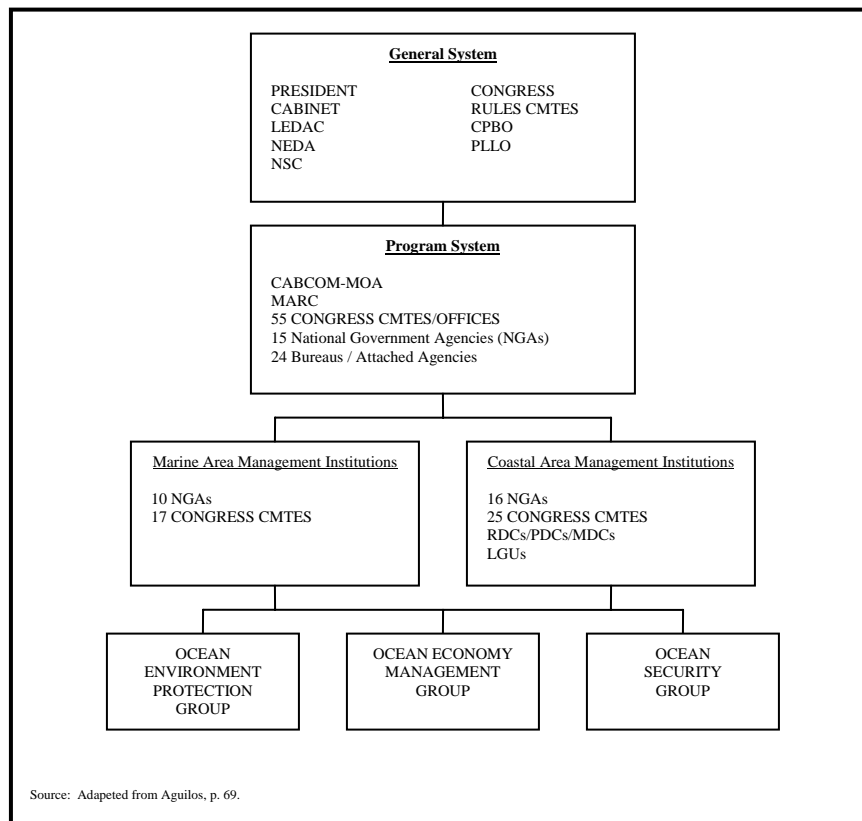
Apart from those mentioned above, ocean-related policies are also articulated in the Medium-Term Philippine and Development Plan (MTPDP) and the 1994 National Marine Policy, which are discussed in various sections of this paper.

V. Institutional Framework for Philippine Ocean Management

For better appreciation of the overall ocean policy environment, it is necessary to have a complete picture of the ocean governance framework, where the CABCOM-MOA has operated as one amongst many institutional structures that are tasked to formulate comprehensive social and economic policy directions to be carried out by the government. The institutional framework governing the ocean affairs may be

categorized into two levels: national policy level and ocean sector level (Figure 7).⁹⁶ The general management system is concerned with the national development agenda while the program system is more directly concerned with the integrated management and sustainable development of the ocean and coastal areas.

Figure 8. Philippine Institutional Framework for Ocean Management



National Level

Office of the President and the Cabinet. The President exercises overall policy and decision-making on the development strategies that the government will pursue and reflect such strategies into the national development plan or officially known as the MTPDP. The MTPDP outlines the broad national development goals and objectives and the specific steps that the government will take to achieve the stated objectives. The

⁹⁶ Adapted from Aguilos, p. 68.

specific strategies shall be developed and translated into specific programs, plans, and projects to be implemented by the respective departments.

National Economic and Development Authority (NEDA). The national planning agency is an independent social and economic planning body that leads and coordinates the formulation and coordination of social and economic policies, plans and programs of national government agencies (NGAs) ensuring maximum participation of the private sector, non-government institutions, and local government units (LGUs) to create synergy towards the attainment of the national goals.⁹⁷ NEDA also ensures that the development planning is fully synchronized with the programming and budgeting processes. National development strategies of the government are integrated into a national development plan -- the MTPDP. The MTPDP is accompanied by an investment plan called the Medium Term Public Investment Program (MTPIP) detailing the specific programs and projects vis-à-vis the development strategies identified in the MTPDP. The MTPIP also provides information on the required funding complement and their potential sources over a six-year period.

In addition to its planning function, NEDA also functions as the lead agency of the Philippine Council for Sustainable Development (PCSD).⁹⁸ The creation of PCSD was a response to the UNCED call for the international community to adopt sustainable development strategies embodied in the Rio Declaration and the UNCED Agenda 21. On 26 September 1996, the Philippines officially adopted the Philippine Agenda 21 (PA 21) as a national strategy for sustainable development.

The Council has the responsibility of establishing guidelines in operationalizing sustainable development principles pursuant to the commitments made by the country in UNCED and Philippine Agenda 21. Among its other functions, the Council is mandated to institutionalize a mechanism to ensure linkage with the legislative, executive, local government units, non-governmental organizations, and business

⁹⁷ Executive Order No. 230 (1987) – Reorganizing the National Economic and Development Authority

⁹⁸ PCSD was established through Executive Order No. 15 (1992), which was later superseded by Executive Order No. 370 (1996).

sectors in formulating policies and decision-making on issues attendant to attaining sustainable development.

PCSD is headed by the NEDA Secretary-General and the DENR Secretary as Vice-Chair and sixteen (16) other NGAs with major roles in achieving sustainable development (Table 6). Major societal groups including the labor, private sector, and civil society groups through a counterpart Civil Society Council for Sustainable Development representing the NGOs and interest groups such as women, farmers, fisherfolk and indigenous peoples are also represented in PCSD. The Council is organized into four committees corresponding to the 4 major areas of concern of the UNCED Agenda 21 as follows:

1. Committee on Social and Economic Dimensions (CSED)
2. Committee on Conservation and Management of Resources for Development (CCMRD)
3. Committee on Strengthening the Role of Major Groups (CSRMG)
4. Committee on Means of Implementation (CMI)

A basic survey of the composition of the CABCOM-MOA, PCSD and the Committee on Conservation and Management of Resources for Development (CMRD) would reveal strong commonalities between them. Of the 17 agencies that make up the CABCOM-MOA, 13 are regular members of the PCSD. Marine affairs hew closely among the concerns of the CCMRD. Its current composition, however, may be inadequate relative to the CABCOM-MOA but E.O. 370 provides flexibility by giving PCSD the authority to reorganize the committees and create sub-committees whenever necessary. This suggests that the PCSD could in fact offer an alternative structure as the focal point for integration and coordination of ocean affairs. The impact of PCSD, however, on national planning has not been evident.

Department of Budget and Management (DBM). The department is responsible for planning and coordinating the formulation of the national budget to support the programs and projects of the government specified in the Medium-Term Public Investment Program (MTPIP).

Table 6. Composition of CABCOM-MOA, PCSD, and CCMRD

Agency	CABCOM-MOA	PCSD	CCMRD
DFA	✓	✓	x
Executive Secretary	✓	x	x
NEDA	✓	✓	-
DND	✓	✓	✓
DENR	✓	✓	✓
NSC	✓	x	x
DA	✓	✓	✓
DOST	✓	✓	✓
DOTC	✓	✓	✓
DOE	✓	✓	✓
DTI	✓	✓	✓
DOJ	✓	x	x
DOF	✓	✓	x
DBM	✓	✓	x
DILG	✓	✓	✓
DOLE	✓	✓	x
DOT	✓	x	✓
DPWH	x	✓	x
DEPED	x	✓	x
DOH	x	✓	✓
DSWD	x	✓	x
DAR	x	✓	✓
National Museum	x	x	✓
Business and Civil Society	x	x	✓

Legislative-Executive Development Advisory Council (LEDAC). LEDAC was established through Republic Act No. 7640 (1992) as an advisory body to the President and serves as a coordinative mechanism between the legislative and executive branches of the national government.⁹⁹ The Council is composed of the President as Chairman with members including the Vice-President, President of the Senate, Speaker of the House of Representatives, and representatives from the Cabinet, House of Representatives, Local Government Units, labor, business, and other major groups. The functions of the council are to recommend to the President socioeconomic development goals to guide the formulation and implementation of the national development plan, determine ways of

⁹⁹ Republic of the Philippines. Republic Act No. 7640, An Act Constituting the Legislative-Executive Development Advisory Council.

integrating regional development plans into the national development plan, integrate environmental principles and ensure consistency of the legislative agenda with the national development plan.

Presidential Legislative Liaison Office (PLLO). The PLLO performs a coordinative role between the Office of the President and the Legislature on the status of priority bills endorsed by the President and other legislative development.

Legislature. The House of Senate and the House of Representatives perform policy and control functions through their legislative powers. Both legislative departments exercise appropriation powers to ensure that priority national development programs are adequately funded and that agency allocations vis-à-vis their respective programs required to implement national development policies are justifiable. The Congress Planning and Budget Office (CPBO) under the House of Representatives performs information and advisory function in support of the legislative agenda. The Committee on Rules of the respective legislative bodies plays a crucial role in the legislative process as they determine the legislative priorities based on importance while at the same time being responsive to the legislative agenda of the President.

Ocean Sector Level

Cabinet Committee for Maritime and Ocean Affairs (CABCOM-MOA). Prior to its abolishment, the CABCOM-MOA performs policy-making and coordination. National government agencies are responsible for developing programs and projects to implement the national ocean policy formulated by the CABCOM-MOA. The Office of the Executive Secretary being the closest cabinet office to Office of the President is expected to ensure that agency programs and projects are consistent with the policy decisions of CABCOM-MOA. The CABCOM-MOA is supported by a Technical Committee and the Maritime and Ocean Affairs Center (MOAC) to perform policy analysis and recommendations as well as to monitor and review their implementation.

National Government Agencies (NGAs). There are at least 20 national government agencies and bureaus that have clear ocean-related mandates with powers to formulate plans, policies, and regulatory measures applying specifically to their respective sectors (Table 7).¹⁰⁰

Table 7. Philippine Marine and Coastal Area Governance Framework

Type of Ocean Use	Ecosystem Covered	Sub-category	Executive Agency	Congress Committee	Senate Committee
Seaports	Marine & Coastal Area	waterfront commercial structures	DOTC-PPA, LGUs	Transportation Committee	Public Works
		offshore commercial structures	DOTC-PCG, DILG	Transportation Committee	Public Services
		dockyards	DOTC-MARINA	Transportation Committee	Public Services
		passenger facilities	DOTC-PPA, LGUs	Transportation Committee	Public Services
		naval facilities	DND-AFP-PN	Defense	Defense and Security
		fishing facilities (vessel terminals, fishery facilities)	DOTC-FISH PORTS, LGUs	Transportation Committee	Public Works
		recreational facilities (sailing vessel terminals, engine-propelled vessel terminals, win surfing facilities, semi-submersible and submarine vessel facilities)	DOTC, LGUs, DOTC-PCG	Transportation Committee	Public Services, Tourism
Shipping, carriers	Marine Area	bulk vessels, general cargo vessels, utilized cargo vessels, heavy and large cargo vessels, passenger vessels, multi-purpose vessels	DOTC-MARINA, DOTC-PCG, DILG-MARIG	Transportation Committee	Public Services
Shipping routes		routes, passages, separation lanes	DOTC-PCG, DILG	Transportation Committee	Public Services

¹⁰⁰ These include: DOTC/PPA/MARINA/PCG/FISH PORTS/ATO/NTC, DILG, DND-PN, DOE/DOE-NAPOCOR, DENR, DOST/DOS-PCMARD/DOST-PAG-ASA, DA/DA-BAR/DA-BFAR, and DOT. A complete matrix of institutions responsible for managing the various ocean sectors can be found in Aguilos, p. 81.

Shipping, navigation aids	Marine & Coastal Area	buoy systems	DOTC-PCG	Transportation Committee	Public Services
		lighthouses hyperbolic systems satellite systems inertial systems	DOTC-PCG, DILG, LGUs DOTC-PCG DND DND		
Sea pipelines		fine coal slurry pipelines liquid bulk pipelines gas pipelines water pipelines waste disposal pipelines	DOE, DENR	Energy	Public Services, Environment and Natural Resources (ENR) Public Services, ENR Energy Public Services, ENR Public Services, ENR
Marine aquatic resources	Marine & Coastal Area	fishing, gathering, offshore farming/mariculture	DOCT-PCMARD, DA-BFAR, DENR, LGUs, DILG- MARIG, DND	Agriculture	Agriculture and Food
Hydrocarbons	Marine Area	exploration exploitation storage	DOE, DOE- PNOC, DOST- PCMARD, DENR DOE, DOTC-PCG, DENR	Energy	Energy
Mineral resources	Marine Area	sand and gravel water column minerals seabed deposits	DENR, LGUs DENR, LGUs DENR	Natural Resources	ENR
Renewable energy resources	Marine Area	wind, water properties, water dynamics, subsoil	DOE, DOST	Energy	Energy
Recreation	Marine & Coastal Area	onshore and waterfront (sunbathing, swimming, aquatic sports, aquariums)	DOT, LGUs	Tourism	Tourism

		offshore (swimming, diving, wind surfing, snorkeling, fishing sailing, yacht racing, cruising)	DOT, DOTC-PCG	Tourism	Tourism
Defense and other naval operations	Marine & Coastal Area	exercise areas	DND-AFP-PN	Defense, Ecology	ENR, National Defense
Waterfront artificial structures	Marine Area	onshore and waterfront offshore	DENR, LGUs DOTC-PCG, DENR	Public Works and Highways Transportation Committee, National Defense	Public Works Public Services, ENR
Marine scientific research	Marine & Coastal Area	water column seabed and subsoil ecosystems external environment interaction protected areas sea use management	DOST-PCMARD-PAG-ASA DENR, DA-PTAC,-SEAFDEC, DOE DOST-PCMARD DOST-PCMARD-PAG-ASA, DENR DOST, DENR, DA DOST, DENR, DA	Science and Technology	Science and Technology, Agriculture
Waste Disposal	Marine & Coastal Area	land-based and ship-based marine pollution (noxious substances, sewage, garbage)	LGUs, DOE, DENR, DOTC-PCG/MARINA, DILG-MARIG, DND-AFP-PN	Energy, Ecology	ENR
Environmental protection and preservation	Marine & Coastal Area	onshore and waterfront (wetland conservation, dune conservation, nature reserve, nature parks, protected areas, species conservation) offshore (marine reserves, marine parks, ecosystem protection and preservation)	DENR, DOST-PCAMRD, DA DENR, DOST-PCAMRD	Ecology Ecology	ENR ENR

Adapted from Aguilos (1998).

Congress Committees. There are about 20 committees in the Senate and Congress that exercise policy-making powers affecting the various ocean sectors (Table 7). The proliferation of overlapping and conflicting bills on ocean affairs currently lodged with the House of Congress indicates that there is an apparent lack of coordination with the stakeholder groups regarding legal reform initiatives. For instance, there is a proposed bill that intends to establish a Maritime and Ocean Affairs Center (MOAC) as secretariat to the DFA¹⁰¹ and another bill proposing to establish a Department of Maritime Affairs.¹⁰² In regard to the establishment of MOAC secretariat, this initiative has become moot since E.O. 37 (2001) has already served that purpose. The most recent positive development is the proposed creation of a Congressional Committee on Maritime and Ocean Affairs (CCMOA).¹⁰³ The successful passage of the bill into law would certainly improve the level of coordination within the House of Representatives and to a certain extent with other concerned agencies. The establishment of a coordinating secretariat under the CCMOA may help improve the level of coordination with other agencies. Currently, legislative priorities are solely determined by the Committee on Rules that continually has to keep a balance among competing legislative priorities. Given this situation, the best chance that an ocean policy agenda could be given proper attention is when there is consistent advocacy for ocean affairs by the members of the legislature.

Marine Area Institutions

There are eight NGAs having direct responsibility in managing the marine area. These include the DOTC, DND, DA, DENR, DOE, DOST, DOT, and DILG (Table 7). Ocean-related programs of the member NGAs were coordinated by then CABCOM-MOA. E.O. 186 (1994), however, did not specify that the CABCOM-MOA has the sole authority to formulate and coordinate ocean policies and programs of the NGAs. At the highest policy-making level, LEDAC and the Cabinet Cluster System may develop policies for ocean management. The hierarchy of authority among these policy-making bodies has not been clarified.

¹⁰¹ House Bill No. HB00196 was filed on 1 July 2004.

¹⁰² There were two bills filed with similar objective of establishing a Department of Maritime and Ocean Affairs: House Bill No. HB00883 filed on 7 July 2004 and HB02197 filed on 5 August 2004.

¹⁰³ House Bill No. HB00592 was filed on 15 February 2005.

Coastal Area Institutions

At the national level, coastal resource management (CRM) programs have been implemented both by the DENR and DA-BFAR. Both national agencies claim that the provision of assistance and funding for coastal resource management to the local government is consistent with the mandate of the respective agencies. Coastal resource management projects, however, have heavily relied on donor-funding and in some cases CRM projects have become unsustainable after project completion because financing mechanisms have not been established or inadequate to sustain the CRM operation. There had been many successful CRM cases around the country but there remains a wide gap as there are still hundreds of coastal towns and cities that have yet to develop local CRM plans and municipal laws to protect the coastal resources. In 2000, only 50 coastal municipalities were known to have established the basic elements of CRM such as coastal area use zones, establishment of marine sanctuaries, registration and licensing system, and coastal law enforcement.¹⁰⁴

The responsibility of managing the coastal area has been transferred from the national government with the devolution of certain powers to the local government units (LGUs) pursuant to the Local Government Code of 1991.¹⁰⁵ Consequently, 832 coastal municipalities, 57 coastal cities, and 64 coastal provinces had to face the challenge of building institutional capacity to manage the fishery resources and protect the coastal environment from destructive uses and practices.¹⁰⁶ The devolution process, in effect, further aggravated the fragmentation in coastal area management by creating nearly a thousand independently operating coastal resource management units. Surveys conducted in 1996 and 1997 revealed that many of the LGUs neither had the complete grasp of their CRM mandate nor the capability to formulate and implement a local CRM plan.¹⁰⁷ The lack of technical expertise, trained staff, and inadequate funding were

¹⁰⁴ DENR (2001), "Proposed National Coastal Resource Management Policy for the Philippines."

¹⁰⁵ Republic of the Philippines. Republic Act 7160, "Local Government Code of 1991." Sec. 16 of the Philippine Fisheries Code of 1998 (RA 8550) reiterates the designation of the municipal waters under the jurisdiction of the city or municipal government.

¹⁰⁶ Department of Environment and Natural Resources, "Proposed National Coastal Resources Management Policy (NCRMP) for the Philippines (CRMP Document No. 26-CRM/2000)," DENR (2001).

¹⁰⁷ *op. cit.* note 104.

among the major obstacles faced by the LGUs in fulfilling their mandate to deliver CRM as a basic service to their constituency.

The devolution of management authority to the local government units has granted it an exclusive right to benefit from the coastal resources within their jurisdiction providing an incentive to manage those resources. Unfortunately, the devolution of management responsibility did not come with resources for the LGUs to discharge the new responsibility.

A key CRM issue that needs to be addressed is the inconsistency and conflicts between plans, programs, and laws within and between the local and national government.¹⁰⁸ The DENR, for instance, has to review its procedures in issuing foreshore lease agreements ensuring that affected LGUs have been properly consulted and that the Environmental Impact Assessment requirement is properly complied with prior to approval of large coastal development projects. On the other hand, DA has to review its procedures in granting fishpond lease agreement, which in some instances have not benefited from proper consultation with the LGUs. Apart from CRM projects in selected coastal municipalities which are funded through Official Development Assistance (ODA), both DENR and DA do not have a long-term CRM capacity-building assistance programs for the LGUs. The ability of the DILG-PNP and DOTC-PCG to enforce the fishery ordinance and marine pollution laws has been constrained by lack of trained personnel and appropriate equipment. Limited coordination and information-sharing between DA-BFAR, DOTC-PCG, and PNP has resulted to renewal of commercial fishing licenses to repeat offenders of fishery laws. Greater collaboration is also needed between DA-BFAR, DILG, DOTC, and DENR to develop a harmonized and comprehensive delivery of technical assistance to the LGUs.

The role of the provincial government in providing support to coastal municipalities and harmonizing CRM policies and programs has not clearly defined. In 2000, only 10 coastal provinces or nearly 15 percent of the total number of coastal

¹⁰⁸ Ibid.

provinces have developed provincial CRM plans and established CRM units to support CRM efforts of coastal municipalities in their jurisdiction.¹⁰⁹

An important feature of the Philippine Fisheries Code of 1998 (Republic Act 8550) is the creation of Municipal or City Fisheries and Aquatic Resources Management Council (M/CFMARC) to provide an opportunity for local stakeholders to participate policy-making for consideration by the city or municipal council in drafting and enforcement of local fishery ordinances, and in the formulation of the Municipal fishery Development Plan.¹¹⁰ The Council is composed of the municipal planning and development officer, chairman of the municipal council committee on fisheries, municipal or city development council, NGOs, private sector, and fisherfolk representatives. Many coastal cities and municipalities have not established their respective M/CFAMRCs. Those that already exist lack the necessary technical expertise and financial resources making them virtually dysfunctional to be able to properly discharge their advisory role to the LGU.

The key solution for resolving the prevailing problems in coastal management is the formulation of a comprehensive national coastal management policy to harmonize coastal resource use laws, enhance coordination of capacity-building programs, enforcement activities. It must also provide for the establishment of consultative mechanisms to enhance local government participation in policy and decision-making, as well as the institutionalization of monitoring, evaluation, information-sharing mechanisms, and reporting on the status of coastal resources and implementation of CRM programs at the different levels of governance.¹¹¹

Initial basis for cooperation already exists between DENR and DA-BFAR with the issuance of a Joint DA-DENR Memorandum Order No. 01 (2000) identifying the areas of collaboration with respect to the implementation of the Philippine Fisheries Code of

¹⁰⁹ Ibid.

¹¹⁰ Sec. 73-75, Republic Act 8550 (Philippine Fisheries Code of 1998).

¹¹¹ Op. cit. note 104.

1998.¹¹² Among the major areas of agreement, the two agencies have agreed that the DENR shall be responsible for convening an inter-agency committee for the joint formulation of a National Integrated Coastal and Marine Management Strategy (NCIMMS) with the primary objective of maintaining and protecting the coastal and marine environment for the purpose of ensuring the sustainable development of fisheries and aquatic resources. The DA-BFAR shall establish the criteria for the establishment of reserves refuge, and sanctuaries for the establishment of marine protected areas under the National Integrated Protected Areas System (NIPAS) Act¹¹³ and shall be consulted regarding the declaration of certain marine and aquatic species as rare, threatened and endangered. These cooperative efforts, however, should not preclude the need for a nationwide comprehensive coastal and ocean policy framework. Under the Joint Memorandum, for instance, DA-BFAR is charged with delineating navigational sea lanes and other passage in fishery areas. It does not clarify, however, the consultation mechanisms through which concerns of the DOTC, DILG, and affected local government units can be properly addressed.

Pursuant to the objective of Joint DA-DENR Memorandum Order No. 01 (2001) of enhancing coordination of CRM-related functions at the national level, the DENR published in 2001 a draft National Coastal Resource Management Policy (NCRMP) for multi-stakeholder review. The NCRMP hinges on a fundamental premise that the local government has the primary responsibility over the management and protection of the coastal area. This implies a reevaluation on the part of the national government agencies of their relationships with the local government on account of the technical and financial support needed by the local government in fulfilling the CRM responsibility.

NCRMP strategies closely adhere to sustainable principles enunciated in the Rio Declaration and Chapter 17 of Agenda 21. These principles include the precautionary approach, participatory management, local empowerment, preservation of environment, and equitable resource allocation. NCRMP also establishes specific planning guidelines

¹¹² Joint DA-DENR Memorandum Order No. 01-00, "Identifying/Defining the Areas of Cooperation and Collaboration Between the Department of Agriculture and the Department of Environment and Natural Resources in the Implementation of Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998."

¹¹³ Republic Act 7586, "National Integrated Protected Areas System Act of 1992"

that recognize the primacy of local government authority in coastal resource management, promote accountability through measurable objectives, well-defined institutional roles, and time-bound programming of activities. Among the most important features of NCRMP are the identification of DENR as the lead agency in coastal and marine management and the recognition of the oversight role of CABCOM-MOA in monitoring implementation of NCRMP at the national level, the standardization of CRM strategies at the local level, establishment of an information clearing house with staff support from DENR, BFAR, and DILG to efficiently process requests for information and technical assistance from the local government. The NCRMP also proposes to clarify institutional roles through the conduct of institutional audits and work towards harmonization of laws and programs by establishing a review committee to identify overlaps, conflicts, and inconsistencies.

The proposed NCRMP, however, relies on the oversight function of the CABCOM-MOA in ensuring that national agencies perform their respective mutually agreed responsibilities. With the abolishing of CABCOM-MOA, however, this particular function becomes void and may consequently weaken the implementation of NCRMP once it is officially adopted by the Philippine government.

VI. The Philippine National Marine Policy

Historical Overview

The Philippines signed the United Nations Convention on the Law of the Sea on 10 December 1982 and subsequently ratified it on 8 May 1984. The Convention granted rights to coastal states with an expanded maritime jurisdiction in the form of the Exclusive Economic Zone (EEZ) extending up to 200 nautical miles from the territorial sea baseline.¹¹⁴ The Philippines, subject to the rights of foreign states, can exclusively benefit from its EEZ, an estimated area of 2.2 million km². In addition, the LOSC imposes certain management obligations upon coastal states to preserve the marine environment¹¹⁵, exercise sustainable marine resource exploitation¹¹⁶, respect freedom of navigation¹¹⁷, and promote international cooperation in marine scientific research¹¹⁸. The LOSC served as the major impetus for the Philippines to rethink its development policy and recognize the imperative to place it within the context of archipelagic setting of the country.¹¹⁹

In preparation for the upcoming entry into force of the LOSC on 16 November 1994, the Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA) formulated a comprehensive action to implement LOSC commitments. The action plan, which would later be called as the National Marine Policy, was formally adopted on 8 November 1994.

The National Marine Policy (NMP) is a policy framework that attempts to comprehensively address concerns related to the utilization and management of the country's ocean resources. Its ultimate objective is to implement a shift in the development policy highlighting the Philippines' status as an archipelago state by moving

¹¹⁴ LOSC, art. 57.

¹¹⁵ LOSC, art. 56, 61

¹¹⁶ LOSC, art. 56, 61, 77

¹¹⁷ LOSC, art. 17, 38, 45, 53, 65

¹¹⁸ LOSC, art. 238, 242

¹¹⁹ Marine Environment and Resources Foundation, Inc., "Formulation and Development of an Integrated Coastal and Marine Policy Framework: Final Report," (Department of Environment and Natural Resources-Philippines and the United Nations Development Programme-Philippines, 2003), Part 2, p. 8.

away from a development framework that is heavily biased on land-based economic activities toward a framework that emphasizes the role of the maritime and ocean sector in national development. It calls for the mobilization of ocean resources to help meet the urgent development needs of the country.

Principles, Policy Goals and Objectives of the NMP

The NMP established four basic principles with which to base policy decisions in relation to various marine-related issues. First principle states that development planning should take into account the archipelagic characteristics of the country. The second principle declares that coastal marine areas are viewed as the locus of community, ecology, and resources. The third principle asserts that implementation of the LOSC must be consistent with national interests as prescribed in the NMP. The NMP views the LOSC as a legal reform agenda and a valuable input in defining the geographic scope of the country's ocean policy. The fourth principle ensures that concerned and affected sectors actively participate in a coordinative and consultative planning and policy-making process through the Cabinet Committee on Maritime and Ocean Affairs (MOAC).¹²⁰

The NMP identifies key development strategies clustered into four policy areas: extent of the national territory, protection of the marine environment, development of the marine economy and technology, and maritime security (Table 8). Among the specific strategies are the development and management of marine resources consistent with the principles sustainable development, adoption of the "polluter-pays" principle, and management of coastal resources based on integrated coastal resources management. It also includes the development of marine research and fisheries management programs, exploration and development of energy sources, and promotion of maritime technologies. Significant emphasis is also placed on the promotion of maritime-based industries, forging of regional technical and economic cooperation, and engaging in international cooperative efforts for the preservation of the marine environment.

¹²⁰ Cabinet Committee on Maritime and Ocean Affairs, "National Marine Policy," (Foreign Service Institute: Manila, Philippines, 1994).

Table 8. Policy Statements and Goals of the National Marine Policy

National Territory	Marine Ecology	Marine Economy and Technology	Maritime Security
Philippine territory is defined and delineated under existing laws, none of which is invalidated by the LOSC.	Explore, develop, and manage offshore/ocean resources based on the principle of sustainable development	Promotion of a viable marine fisheries management program	Enhance maritime security – a state wherein the country's marine assets, maritime practices, territorial integrity and coastal peace and order are protected, conserved and enhanced
There is no obligation under the LOSC to redraw existing baselines.	Develop and manage coastal resources within an integrated coastal zone management framework	Provision of continuous and adequate supply of energy	Promote and enhance maritime security as a key component of national security
While the international recognition of the Treaty of Paris limits remains an issue, the extended maritime jurisdictions of the Philippines (i.e. territorial sea, contiguous zone and continental shelf) are well-established under exiting Philippine laws and customary international law.	Develop and enhance national marine consciousness through a comprehensive information program	Development of technological capabilities in the maritime sector	Provide a stable and peaceful socio-political and administrative environment in the country that fosters sustained profitability and growth for maritime industries
	Encourage the development of a marine research program	Promoting investments in marine areas	Protect and defend the integrity of the Philippines' marine resources
	Adopt the "polluters-pay" principle in ensuring the protection of the marine environment	Harnessing information technology to serve NMP goals	Ensured preparedness for and effective response to natural calamities and man-made disasters
	Ensure the high quality of maritime professional schools and other such institutions for training experts in maritime-related issues	Enhancing regional economic and technical cooperation in marine and ocean affairs	Provide leadership and guidance in the proper and effective collection, processing and distribution of strategic information supportive of the NMP
		Strengthening trade policies supportive of maritime issues	

Source: Compiled from the National Marine Policy (1994)

VII. The Cabinet Committee on Maritime and Ocean Affairs

The coordinative body established to formulate national ocean policy and promote integration and coordination in ocean governance in the Philippines is the Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA). The Cabinet Committee traces its origin to the Cabinet Committee on the Treaty of the Law of the Sea established under Executive Order No. 738 (1981). The Committee was tasked with the overall responsibility of implementing the 1982 LOSC. On 5 June 1988, the President issued E.O. 328 for the purpose of reconstituting the Committee and expanding its membership from six to twelve members.¹²¹ The Committee was mandated to be responsible for implementation of the LOSC and harmonization of domestic laws and regulations. E.O. 328 also reaffirmed the transfer of the Law of the Sea Secretariat from the defunct Office of the Prime Minister to the DFA although the leadership role of DFA has always been exercised by the DFA since the establishment of the CABCOM. The CABCOM performed similar functions as mandated under E.O. 738, which includes the formulation of short-terms and long-term plans and taking necessary preparations in the form of administrative, technical, and technological requirements for an effective management and protection of the EEZ resources.

On 12 July 1994, the President issued Executive Order No. 186 expanding the membership of the cabinet committee and renaming it as the Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA). It broadened the scope of the functions of the Cabinet Committee to include not only formulating policies to implement the LOSC but also addressing other marine-related concerns. The Committee was chaired by the Department of Foreign Affairs (DFA), with fourteen (14) other agencies and offices as its members. A notable feature of E.O. 186 is the importance it placed on the need to develop a marine research community through active participation of both public and private academic and research institutions involved in marine research. The Cabinet Committee was reconstituted on 30 July 1999 through Executive Order No. 132 issued

¹²¹ CABCOM composition based on E.O. 738 (1981) includes the DFA, DOE, DENR, DND, DOJ, and NEDA. E.O. 328 (1988) expanded the membership to include DTI, DOTC, DBM, DOST, DOF, and the Office of the Executive Secretary. E.O. 186 (1994) added DOE, DILG, and NSC and further expanded by E.O. 132 (1999) to include DOLE and DOT.

by the President to strengthen the Cabinet Committee by formally establishing a Technical Committee.

The general objectives of E.O. 132 were to promote exchange of information and coordination among the concerned sectors of the country, and to develop and promote the capabilities of the country to control, utilize, manage, and protect its marine resources for benefit of the nation as well as in fulfilling commitments to international agreements particularly the LOSC and other non-binding instruments including the Rio Declaration and the UNCED Agenda 21.

E.O. 132 provided a clear set of principles to guide policy-making related to maritime and ocean affairs. Specifically, it stipulated that policy decisions in domestic and international maritime and ocean affairs should be consistent with the country's national marine policy, resource management interventions to be based on the interconnectedness of the terrestrial and marine ecosystems, and priority attention be placed on the development of capability to control, utilize, manage, and protect marine resources.

The composition of the CABCOM-MOA was expanded to include two additional departments, namely: Department of Labor and Employment (DOLE) and Department of Tourism (DOT).¹²² This lends due regard to the importance of the roles that these agencies play in regard to promotion of labor welfare in the ocean sector, and coastal and marine tourism industries.

E.O. 132 designated CABCOM-MOA to perform an advisory role to the President and responsible for the formulation, implementation, and coordination of national marine policy as well as identification of policy options in implementing international

¹²² The seventeen members of the CABCOM-MOA include the (1) Secretary of Foreign Affairs (Chairperson), (2) Executive Secretary, (3) Director-General of the National Security Council, (4) Secretary of National Defense, (5) Secretary of Environment and Natural Resources, (6) Secretary of Agriculture, (7) Secretary of Socio-Economic Planning, (8) Secretary of Science and Technology, (9) Secretary of Transportation and Communications, (10) Secretary of Energy, (11) Secretary of Trade and Industry, (12) Secretary of Justice, (13) Secretary of Finance, (14) Secretary of Budget and Management, (15) Secretary of Interior and Local Government, (16) Secretary of Labor and Employment, and (17) Secretary of Tourism

agreements where Philippines is a signatory. It is also tasked to undertake necessary steps to enhance integration and coordination in managing ocean interests in maritime security, protection and conservation of marine environment, ocean-based industries, and promotion of archipelagic consciousness.

The CABCOM-MOA was supported by the CABCOM-MOA Technical Committee (TechCom), which was created as an ad hoc entity under E.O 186 and was later formally established by E.O. 132. The TechCom consisted of representatives from the various member agencies of the CABCOM-MOA. Its responsibilities are to oversee the implementation of decisions and policies carried out by CABCOM-MOA, provide policy recommendations, decision inputs, programs, and projects to promote sustainable use and protection of marine resources for consideration by the CABCOM, promotion of Philippine interests in shipping, seafaring, fisheries, energy and mineral resources. It is also responsible in recommending official positions on issues pertaining to boundary delimitation, fisheries, and other maritime disputes as well as coordinating the activities of concerned government entities in implementing international agreements related to maritime and ocean affairs.

The CABCOM-MOA TechCom is grouped into five sub-committees (Figure 8):

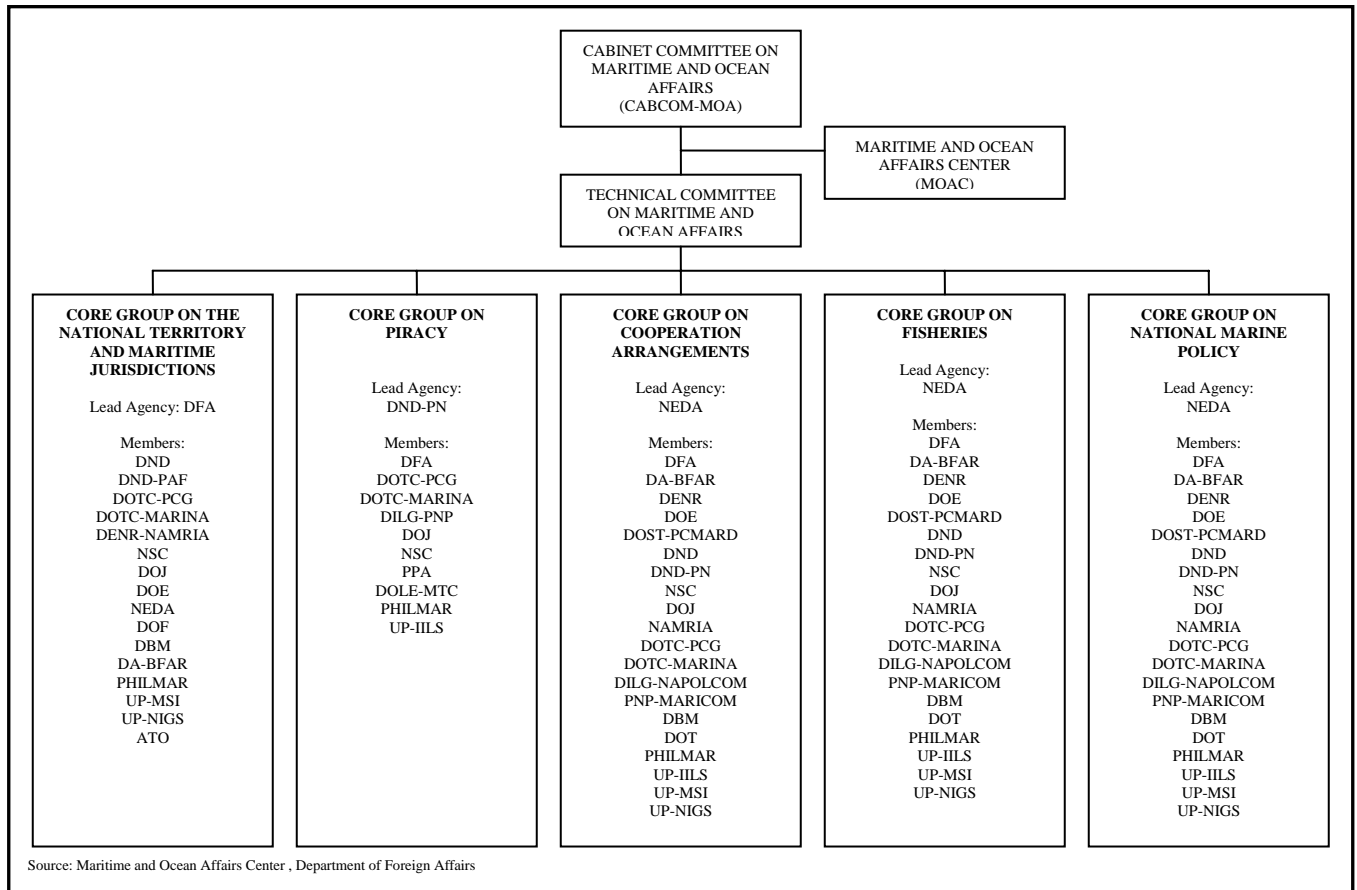
1. National Territory and Maritime Jurisdictions
2. Piracy
3. Cooperation Arrangements
4. Fisheries
5. National Marine Policy

The TechCom sub-committees were apparently structured in accordance with the priorities set forth in the 13-Point Work Program adopted prior to the dismantling of the CABCOM-MOA with the issuance of E.O. 37 (2001). The work program, viewed as more as more concrete expression of the National Marine Policy, includes the following priority activities:

1. Updating of the National Marine Policy
2. Determination of baselines and basepoints
3. Delineation of territorial and maritime boundaries
4. Delineation of the continental shelf

5. Designation of archipelagic sea lanes
6. Negotiation with relevant states on maritime boundaries
7. Joint development
8. Monitoring, control, and surveillance
9. Marine scientific research
10. Marine environmental protection
11. Piracy and armed robbery at sea
12. Tie-ups and networking
13. Information dissemination

Figure 9. CABCOM-MOA Technical Committees

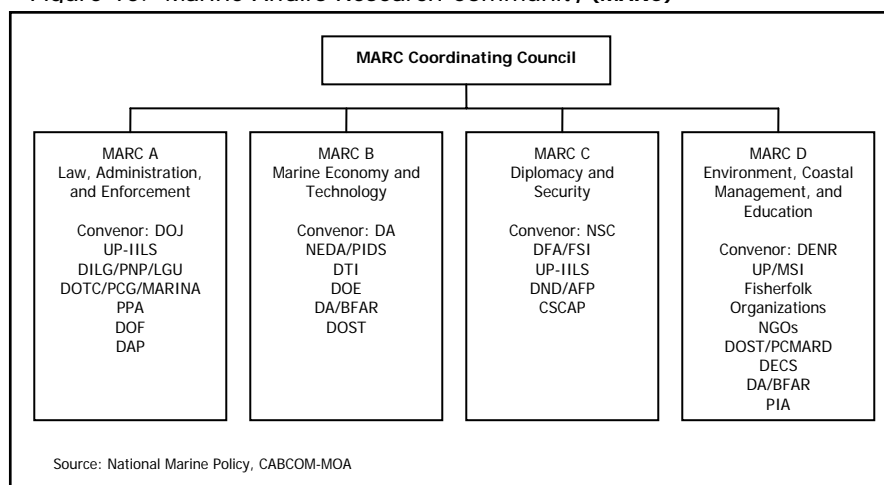


The organization of the TechCom subcommittees was so designed primarily to address the priorities spelled out in the 13-Point Work Program. Important maritime concerns, however, received less attention due to the limited scope of issues that the work program covers. The list of activities tended to focus heavily on territorial issues, thus, shifting the focus away from a development-oriented ocean management. There is a general consensus that the final resolution of delimiting the maritime boundaries

and maritime jurisdictions of the Philippines are important requisites for the exercise of stewardship responsibility. Ocean management, however, must be concerned with optimization of benefits from the use of ocean resources while preserving the integrity of the marine environment. The task of ocean management includes the final determination of the territorial boundaries but only be considered as a component of the ocean policy that will facilitate the pursuit of ocean-based development. This will require translating the objectives stated in the NMP and the 13-Point Work Program into specific programs and activities, which are to be incorporated into the MTPDP for implementation with definite time frame of implementation. Ocean development programs and activities that may not be included in the current medium-term development plan due to budgetary limitations may be scheduled for implementation in the ensuing national planning and programming cycle. This is to ensure progressive realization of national ocean management objectives over a specified period and prevent the loss of economic opportunities.

The CABCOM-MOA TechCom was assisted by Marine Affairs Research Community (MARC) groups that conduct policy studies and provide scientific information. There were four MARC teams under the following policy clusters: (MARC A) Law, Administration, and Enforcement, (MARC B) Marine Economy and Technology, (MARC C) Diplomacy and Security, and (MARC D) Environment, Coastal Management and Education (Figure 9).

Figure 10. Marine Affairs Research Community (MARC)



The MARC provided the opportunity for the government, civil society organizations, and research and academic institutions to participate in the ocean management planning process by providing relevant information for ocean policy planning and decision-making. It must be noted, however, that some of the critical role players lacked involvement in the MARC teams. For instance, the Department of Interior and Local Government (DILG) and the League of the Provinces and/or Municipalities had no representation in MARC D (Environment, Coastal Management and Education) despite the direct role that the Local Government Units (LGUs) exercise over coastal or municipal waters. Similarly, the Department of Transportation and Communication lacked representation in MARC B (Marine Economy and Technology) where shipping concerns fall under its scope of concerns.

When the CABCOM-MOA was reorganized under E.O. 132 (1999), the MARC system was abolished and its functions were taken over by TechCom subcommittees. In retrospect, the MARC organization structure did not really capture the overlapping of ocean issues that may have relevance to two or more MARC groups. For example, the shipping and marine tourism concerns may cut across MARC B and MARC D.

Some of the maritime issues that are yet to be considered for incorporation into the national ocean development agenda include the following:

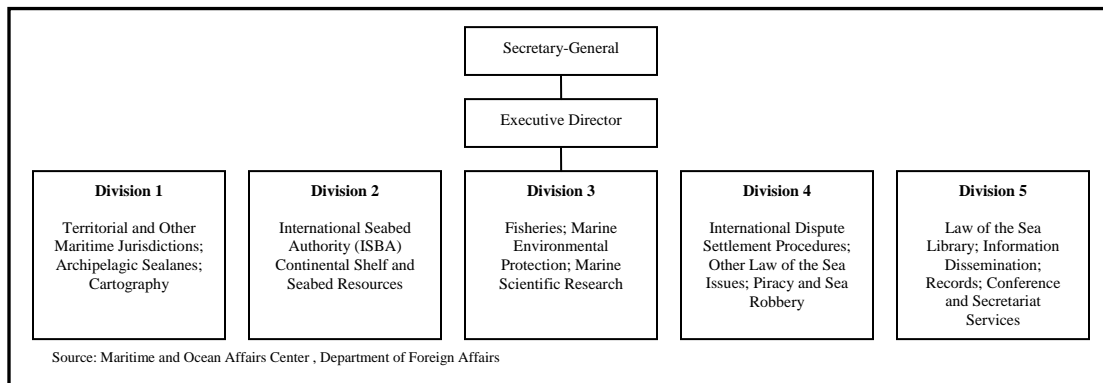
1. EEZ resources utilization and management
2. Naval defense industry development
3. Maritime identification system/surveillance and enforcement
4. Coastal and marine tourism development
5. Vessel traffic and monitoring system
6. Management of pollution from land and ship-based sources
7. Ports and shipping services
8. Marine research and education program
9. Oceans information management system
10. National fisheries management system for coastal and marine fisheries

E.O. 132 reestablished the CABCOM-MOA secretariat and renamed it to Maritime and Ocean Affairs Center (MOAC). The Maritime and Ocean Affairs Unit (MOAU), as MOAC was formerly known, was classified as a unit of the Department of Foreign Affairs (DFA). This organizational classification has placed the MOAU under severe budgetary

limitations, which affected its operational effectiveness. Under the new arrangement, MOAC was elevated to the status of an attached agency of the DFA. The new status entitled MOAC a separate budgetary allocation, thus improving its capacity, although not significantly enough, to deliver the expected output such as the preparation of policy studies for decision-making. MOAC provided support and expertise to DFA and CABCOM-MOA on matters related to maritime and ocean-related concerns. The specific functions of MOAC are to coordinate and consult with the members of the TechCom on ocean-related issues, develop research programs and policy studies for regulatory, strategic, and security purposes, create an information system for ocean policy and decision-making, and establish network with national and international experts in support of the ocean policy.

The Secretary of the Department of Foreign Affairs acted as chair of the CABCOM-MOA with the Secretary of the Department of Environment and Natural Resources as the Vice-Chair. The chairperson appoints the MOAC Secretary-General to lead the MOAC staff that provides technical and administrative assistance to the CABCOM-MOA under the supervision of an Executive Director. MOAC is organized into six divisions as shown in Figure 10.

Figure 11. MOAC Organizational Structure



A drastic turn in the policy direction took place with the issuance of Executive Order No. 37 on 24 September 2001 abolishing the CABCOM-MOA and upgrading the status of the MOAC into an attached agency of the Department of Foreign Affairs. The

CABCOM-MOA coordinated national ocean policy formulation until E.O. 37 (2001) abolished it and transferred its functions to the DFA-Maritime and Ocean Affairs Center. It must be noted that among the justifications provided for this policy change was that the Cabinet Secretaries “should do less cluster and inter-agency committee work so that they can concentrate on running their department.”¹²³ This action, however, is contrary to the intentions of previous issuances that sought to create a venue for better coordination and integration among agencies with marine-related functions.

E.O. 37 designated MOAC to assume the functions and responsibilities of the defunct CABCOM-COM and its Technical Committee designates the Department of Foreign Affairs as lead agency to implement the National Marine Policy. Among the functions of the DFA are to oversee and coordinate the implementation of the NMP; formulate and recommend programs and projects to enhance integrated and coordinated management of maritime and ocean interests in preserving territorial integrity, protecting the marine environment, and promoting interests in fisheries, shipping, energy and mineral resources, etc. The DFA is also responsible for determining the appropriate policy alternatives in implementing international agreements and other non-binding instruments that the Philippines has acceded to. Moreover, it can recommend policies and programs to advance national marine interests including the promotion of archipelagic consciousness, marine scientific research, small-scale fishing, and aquaculture.

While E.O. 37 calls for “less cluster and inter-agency committee work”, the DFA would inevitably need the cooperation of agencies in fulfilling its basic function of enhancing the integrated and coordinated management of maritime and ocean interests. E.O. 37 does not specify the financial resources for MOAC to carry out its mandates nor does it clearly establish the basis for its authority to enjoin agencies to cooperate. It would thus appear, that E.O. 37 gave MOAC the enormous responsibility of ocean policy formulation and coordination, divestment of decision-making power once held by the agencies who were part of the defunct CABCOM-MOA, and left an institutional vacuum

¹²³ President, Republic of the Philippines, *Executive Order No. 37: Abolishing the Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA)* (2001 [cited April 29 2005]); available from <http://www.dfa.gov.ph/moac/moac7.htm>.

due to lack of a structure and process viewed as legitimate for the agencies be involved. In the meantime, coordination and consultation by MOAC with the agencies and related sectors are done on ad hoc basis. Obviously, this state of affairs will unlikely difficult to sustain due to lack of cogency to impel the agencies to cooperate.

VIII. The Ocean Agenda and the Medium-Term Philippine Development Plan

The preparation of a national development plan is a practice adopted by most developing countries to identify priority national programs and efficiently allocate its limited resources. In the Philippines, the national development planning process commences with the issuance of a memorandum by the President directing the National Economic and Development Authority (NEDA) to initiate the formulation of the Medium-Term Philippine Development Plan (MTPDP) (Figure 11). The drafting of the national development plan is based on the socio-economic development agenda drawn by the President setting the general direction of national policy and programs in the medium-term. NEDA prepares the planning guidelines specifying the procedures and requirements for compliance by the national agencies. A draft document of strategies, targets, and activities is initially prepared by NEDA in support of the agenda of the President.

The MTPDP is the country's economic roadmap expressing the development thrusts of the government over a six-year period. The MTPDP is supplemented by a multi-year Medium-Term Philippine Investment Plan (MTPIP) detailing the specific programs, activities, and targets committed by the implementing national agencies to achieve; and the corresponding budgetary complement.

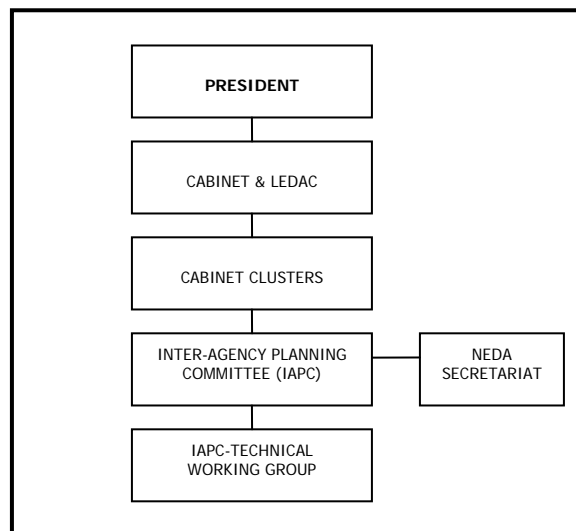
The priority sector strategies and activities (PSAs) for each thematic sub-sector of the economy is identified by an appropriate inter-agency committee. In the case of the agriculture and natural resources sub-sector (which subsumes the marine sector), the Inter-Agency Committee for Agriculture, Agrarian Reform and Natural Resources (IAC-AARNR) is responsible for identifying the priority PSAs and may refer to the

appropriate committee some cross-cutting policy issues. IAC-AARNR is composed of the following Cabinet Secretaries:

1. Department of Agriculture;
2. Department of Environment and Natural Resources;
3. Department of Agrarian Reform, Department of Science and Technology;
4. Presidential Assistant for Agricultural Modernization;
5. Director-General, NEDA;
6. Department of Budget and Management; and
7. Department of Trade and Industry

An advisory team, consisting of representatives from private sector, academe, legislature, and civil society, may be invited by IAC-AARNR to provide policy options and recommendations. The detailed elaboration of the agenda identified by the IAC-AARNR is done by a Technical Working Group with members coming from the technical staff of the respective agency. When the PSAs are finalized, the draft MTPDP is presented to the Cabinet Cluster on Economy for approval before endorsement to the joint meeting of the Cabinet and LEDAC final approval. Thereafter, the national agencies are instructed to identify specific programs and projects to implement the sector strategies identified in the MTPDP and consistent with Medium-Term Fiscal Program of the national government. The programs and projects will form part of the MTPIP which will serve as basis to monitor and target national government resources over the medium-term.

Figure 12. Medium-Term Philippine Development Plan (MTPDP) Formulation Process



The MTPDP 2004-2010 is based on the Ten-Point Agenda of the President that envision to reduce poverty in the country and improve economic well-being through the creation of economic opportunities and maintenance of socioeconomic stability. The closest development agenda pertaining to ocean development is the creation of 6 to 10 million jobs over a six-year period through the development of 2 million hectares of land (including inland and offshore aquaculture) for agriculture business.¹²⁴ This is further elaborated in the MTPDP to include the development of about 17,000 hectares of idle offshore and inland bodies of water for aquaculture and mobilization of fishing communities into production, processing, and marketing cooperatives.¹²⁵ There is also a continuing policy to increase exploration and exploitation of oil and natural gas resources of the country which is currently estimated at about nine billion barrels of recoverable petroleum resources. Recently, an agreement was concluded between the Philippines, China, and Vietnam have Joint exploration activities with China and Vietnam consistent with the principles of the ASEAN-China Declaration of Code of Conduct in the South China Sea promoting regional cooperation in the contested areas of the South China Sea.¹²⁶ In terms of national security, however, there appears to be no clear policy to improve maritime defense and enforcement capability.¹²⁷

The Philippines also recognizes the importance of developing the capability of the armed forces in protecting national sovereignty and preserving national security against foreign threats that may undermine maritime security and environmental integrity of marine resources under jurisdiction of the country.¹²⁸ Public investment will be made to enhance naval firepower and naval patrolling capability¹²⁹ This policy objective was inspired by the global effort to fight terrorism, while not necessarily framed on the

¹²⁴ Chapter 2, *Agribusiness, Medium-Term Philippine Development Plan (MTPDP) 2004-2010* ([cited July 7, 2005]; available from http://www.neda.gov.ph/references/PGMA_plans/PGMA10pointAgenda.htm.

¹²⁵ Ibid.

¹²⁶ "Chinese Premier Urges Joint Oil Exploration of Spratlys," *Philippine Daily Inquirer*, July 4, 2005.

¹²⁷ Chapter 10, *Energy Independence, Medium-Term Philippine Development Plan (MTPDP) 2004-2010* ([cited July 7, 2005]; available from <http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/MTPDP%202004-2010%20NEDA%20v11-12.pdf>

¹²⁸ Chapter 24, *Responsive Foreign Policy, Medium-Term Philippine Development Plan (MTPDP) 2004-2010* ([cited July 10, 2005]; available from http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx24_FPolicy.pdf

¹²⁹ Chapter 23, *Defense Reforms, Medium-Term Philippine Development Plan (MTPDP) 2004-2010* ([cited July 10, 2005]; available from http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx23_Defense.pdf

desire to protect the ocean resources of the country, creates a favorable spillover effect to the ocean sector in terms of better maritime enforcement capability.

In terms of infrastructure development, the MTPDP considers the archipelagic configuration of the country in developing transportation networks that connect road networks with inter-island navigation routes. The strategy aims to develop economic opportunities by reducing the transportation and transaction costs of doing business and greater accessibility to major tourist destinations in the country.¹³⁰

In the environment sector, the DENR programs include marine and coastal resources management including the provision of technical assistance to the local government, mangrove replanting, establishment of marine protected areas (MPAs), and creation of coastal law enforcement units. Maritime zones in the near-shore would be delineated for the purpose of identifying areas for utilization, protection, and exploration covering an area of 417,322 km² with emphasis in completing delimitation of municipal waters especially those with offshore islands.¹³¹ DA programs, on the other hand, include the establishment of mariculture park zones, training and establishment of FARMCs, improving of local enforcement capability, and establishment of marine reserves and fish sanctuaries.¹³²

Apparently, government programs in the MTPDP pertaining to ocean development are identified on an ad hoc manner and do not constitute a sustained and long-term ocean policy agenda for the country. The promotion of aquaculture and offshore farming, within the context of the MTPDP, are merely an extension of the agribusiness lands development while practically neglecting the development and protection of the fishery resources in the EEZ fisheries which are largely unutilized. The national development plan remains predominantly land-based in orientation that is nearly tantamount to an underestimation of the economic potential of the EEZ. It is noteworthy that despite the joint memorandum between the DA and DENR to clarify

¹³⁰ Chapter 6, *Infrastructure, Medium-Term Philippine Development Plan (MTPDP) 2004-2010* ([cited July 10, 2005]; available from http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapter6_Infrastructure.pdf)

¹³¹ *Environment and Natural Resources Chapter, Medium-Term Public Investment Program (unpublished)*

¹³² *Agribusiness Chapter, Medium-Term Public Investment Program (unpublished)*

their management roles in coastal resources management, the programs that each department remain unchanged as both continue to independently provide technical assistance for coastal law enforcement to the local government and establish marine protected areas or marine reserves constituting a duplication of effort. The non-inclusion of CABCOM-MOA programs is a clear manifestation that the CABCOM-MOA planning system has never been mainstreamed into the national development planning process. Some of the ocean-related activities included in the MTPDP may incidentally be consistent with those identified by the CABCOM-MOA. The benefit of submitting the proposed activities for review by a coordinative body similar to the CABCOM-MOA, however, is the minimization of possible conflicts with plans of other agencies as well as the synergistic response that the review process can generate among the concerned agencies.

IX. Policy Issues

Need for consistency of domestic policies with the international legal regime for oceans management.

The NMP does not clearly indicate the manner by which domestic policies will be linked with the regimes under the LOSC due to a presumption that there is no legal conflict between Philippine laws and the LOSC. There are two sources of legal inconsistencies, however, which would require an amendment to the Philippine national laws to be fully compliant with Part IV of LOSC on the regime for archipelagic states.

The first issue concerns the concept of internal waters. The 1987 Philippine Constitution defines internal waters as “the waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions.”¹³³ This contradicts, however, the LOSC definition of internal waters, which refers only to the waters on the landward side of the archipelagic baseline enclosed using straight

¹³³ Art. I, 1987 Philippine Constitution. Similar assertions were made in previous legal issuances including Republic Act No. 3046 (1961) as amended by Republic Act No. 5446 (1968), and the Philippine Constitution of 1935 and 1973.

baselines across mouths of rivers directly flowing into the sea, bays and permanent harbor works.¹³⁴ Within the internal waters, the coastal state exercises full sovereignty, thus the right of innocent passage does not apply.¹³⁵

The proceedings of the negotiations during the UNCLOS III could shed some light to the present policy position of the Philippines with respect to its national territory. During the UNCLOS III, the Philippines noted that the draft articles that proposed to establish a regime for passage of foreign vessels through the archipelagic waters were less restrictive than passage through the territorial sea.¹³⁶ The Philippine delegation maintained that the archipelagic state should be able to exercise greater control over the archipelagic waters than the coastal state exercises over the territorial sea. This was and still considered by the Philippines as essential for the preservation of its territorial integrity and protection against foreign intrusion.

The Philippine delegation strongly opposed and worked for the revision of the draft articles that are now embodied in the LOSC in articles 52 to 54. The proposed modifications included the deletion of the provision on archipelagic sea lanes passage and right of overflight, restriction on the right of innocent passage of foreign warships, and removal of the role of the international organization in the designation of sea lanes.¹³⁷

It was finally agreed in UNCLOS III to the dissatisfaction of the Philippine delegation that the archipelagic waters would be subject to the right of innocent passage and archipelagic sea lanes passage of ships of foreign states within sea lanes and air routes designated by the archipelagic states.¹³⁸ Where the archipelagic state decides not to designate such sea lanes and air routes, the right of archipelagic sea

¹³⁴ LOSC, art. 50.

¹³⁵ Id., art. 8.

¹³⁶ UNCLOS III, Second Committee, 162nd meeting, 31 March 1982, p. 51.

¹³⁷ Ibid.

¹³⁸ LOSC, art. 52, 53(1); see also Kwiatkowska, B. and E. R. Agoes. (1991). Archipelagic Waters Regime in the Light of the 1982 United Nations Law of the Sea Convention and State Practice. Bandung, ICLOS, UNPAD, Netherlands Cooperation with Indonesia in Legal Matters, p. 20.

lanes may still be exercised by foreign states within routes normally used for international navigation.¹³⁹

Legal confusion arises as the Philippines have expressed, through a *note verbale* to the UN on 7 March 1955, a guarantee of the right of innocent passage over its “internal waters”.¹⁴⁰ Subsequent legislation, however, did not clearly make any reference to right of passage of foreign ships through archipelagic waters being regarded as “internal waters”. In a declaration submitted to the UN as an instrument of ratification of the LOSC on 8 May 1984, the Philippines reaffirmed its previous declarations that the “concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.”¹⁴¹ As a practice, the Philippines requires prior authorization for overflight and passage of foreign warships and nuclear warships but no such requirement is needed for passage through traditional routes for international navigation within the archipelagic waters.¹⁴²

The declaration above may indicate non-conformity with the LOSC provision guaranteeing the right of innocent and archipelagic sea lanes passage to all ships and aircraft in the archipelagic waters regardless of whether or not there are designated archipelagic sea lanes.¹⁴³ This prompted several countries, including the United States, Australia, Bulgaria, Czechoslovakia, Ukraine, and the USSR, to express their objections to the statements made by the Philippines.¹⁴⁴ In particular, the US argued that “archipelagic waters” and “internal waters” are significantly distinct concepts under the LOSC. The US further noted that the straits within the archipelagic waters that link the high seas or exclusive economic zone are subject to the regime of archipelagic sea lanes

¹³⁹ LOSC, art. 53(12).

¹⁴⁰ Robin Rolf Churchill, and Alan Vaughan Lowe, *The Law of the Sea* (Manchester, UK: Manchester University Press, 1988).

¹⁴¹ Republic of the Philippines, *Declaration Upon Ratification of the LOSC, Par. 7* (1984 [cited April 29 2005]); available from http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

¹⁴² Kwiatkowska, p. 17 and 25.

¹⁴³ *Ibid.*, art. 52 and 53(12).

¹⁴⁴ United States Office of the Geographer, *Limits in the Seas: United States Responses to Excessive National Maritime Claims, No. 112* (1992 [cited April 29 2005]); available from <http://www.law.fsu.edu/library/collection/LimitsinSeas/ls112.pdf>, p. 50.

passage. On one hand, the part of the statement relating “straits” could be interpreted simply as an assertion of the Philippine government that the regime for straits used for international navigation being referred in Part III of the LOSC does not apply to archipelagic states. At any rate, the definition of “internal waters” must be adjusted and the regime for passage within the archipelagic waters should be clarified to consider the effect of article 53(12) giving foreign states the right of archipelagic sea lanes passage “through the routes normally used for international navigation.”

The provisions establishing the archipelagic state regime that became Part IV of the LOSC were certainly far from the ideal situation that the Philippine delegation had sought to achieve. Despite objections made during the negotiations, the Philippines have to contend with the present provision on archipelagic sea lanes passage that guarantees not only the freedoms of navigation and overflight but which also allows foreign ships and aircrafts, including military vessels, to traverse at normal mode.¹⁴⁵ In addition, foreign warships may also exercise the right of innocent passage in other areas of the archipelagic waters, which the Philippines had proposed to be deleted. These were essential trade-offs, however, for the major maritime powers and the international community to formally accept the archipelago regime to become part of international law.

The Philippine declaration referred above also stated in paragraph 5 that the LOSC should not be construed as amending Philippine laws and reserves the right to make any future amendments¹⁴⁶. This statement may not necessarily be inconsistent with Article 310 of the LOSC if there was an amendment to Article I of the 1987 Philippine Constitution pertaining to the internal waters. The reluctance on the part of the Philippine government to adjust domestic laws to reclassify the internal waters into archipelagic waters can be attributed to its present lack of capability to enforce maritime safety regulations, pollution prevention, and ensure that vessels traversing designated archipelagic sea lanes comply with the passage requirements in accordance with the LOSC.¹⁴⁷

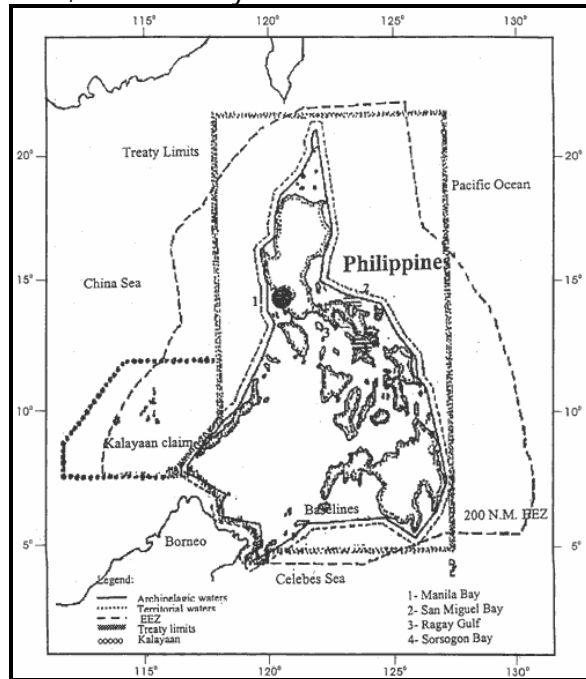
¹⁴⁵ LOSC, art. 53(3).

¹⁴⁶ Ibid., par. 5.

¹⁴⁷ LOSC, art. 39 and 42(1).

The other legal issue concerns the territorial sea. Currently, Philippine territorial sea limits are defined by the rectangular area based on the “boundaries” defined in the Treaty of Paris (1898) and related treaties (Figure 12).¹⁴⁸ The Philippine claim for historic title to the territorial sea is based on the Philippines’ status being a successor to the United States with the formal cession of the Philippine Islands to the United States under the terms of the Treaty of Paris. The Philippines maintains that the Treaty of Paris limits are territorial boundary lines and not merely as geographical reference of the area within which the land area fall under Philippine jurisdiction.¹⁴⁹

Figure 13. Map of the Philippines showing Treaty of Paris territorial sea limits, Exclusive Economic Zone, and the Kalayaan Claim.



Source: Bureau of Fisheries and Aquatic Resources

¹⁴⁸ The Philippine territorial claims are based on the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930.

¹⁴⁹ Merlin M. Magallona, "Problems in Establishing Archipelagic Baselines for the Philippines: The LOSC and the National Territory," in *Roundtable Discussion on Baselines of Philippine Maritime Territory and Jurisdiction* (Quezon City, Philippines: Institute of International Legal Studies, University of the Philippines Law Center, 1995), p. 4.

The area covered by the Philippines as its “territorial sea” exceeds the limit that states are entitled under the LOSC. The territorial sea covers a band of water with a breadth of 12 nautical miles from the baseline.¹⁵⁰ The Philippine territorial sea extends to 140 miles in Western Luzon and as far as 290 miles measured from a point in Eastern Luzon.¹⁵¹ Moreover, the scope of the Philippine “territorial sea” overlaps with its declared EEZ creating an abnormal situation where complete freedoms of navigation and overflight are guaranteed even within the “territorial waters.”

The inner limits of the “territorial sea” are fixed by Republic Act No. 3046 of 1961 (as amended by Republic Act No. 5446) consisting of straight baselines connecting the outermost islands of the archipelago. It must be noted that while the 1987 Philippine Constitution no longer make any reference to the Treaty of Paris as basis for the limits of its territorial sea, previous legislation have not been modified indicating that the Philippines has not actually dropped its claim for historic territorial sea.

During the UNCLOS III, the Philippines sought for the recognition of its historic territorial sea and its exception from the newly established rule that defined a 12-nautical mile limit to the territorial sea. The Philippine delegation argues that there seems to be no valid reason for recognizing only “historic bays” and not historic territorial sea emphasizing that this would substantially diminish its territorial sea by about 230,000 square miles.¹⁵²

Upon signing the 1982 LOSC, Philippines declared that its act of signing the Convention should not be construed as amending its national laws regarding its maritime jurisdictions with respect to the LOSC, and its sovereign rights as successor to the United States under the Treaty of Paris.¹⁵³ The United States protested these statements by arguing that the “rights of states under international law cannot be enlarged by their domestic legislation, absent acceptance of such enlargement by affected states” and that “neither those treaties, nor subsequent practice, has conferred

¹⁵⁰ LOSC, art. 3.

¹⁵¹ Kwiatkowska, p. 23.

¹⁵² UNCLOS III Official Records, 5th meeting – 16 July 1974

¹⁵³ *op. cit.* note 141.

upon the United States, nor upon the Philippines as successor to the United States, greater rights in the waters surrounding the Philippine Islands than are otherwise recognized in customary international law.”¹⁵⁴

Some objections focused mainly on the issue of the incompatibility of the Philippine declaration with the intent of Article 310 since the particular statement mentioned above has the effect of a reservation or exception which is prohibited under Article 309. The protesting states viewed the Philippine declaration as having no legal effect due to a refusal to address the discrepancy between Philippine municipal laws and the LOSC particularly on the application of the regime for archipelagic states.¹⁵⁵

In an effort to demonstrate its commitment to fulfill its obligations to the LOSC, in response to an objection made by Australia on 3 August 1988, the Philippine Government officially conveyed to the UN Secretary-General on 26 October 1988 that it does “intend to harmonize its domestic legislation with the provisions of the Convention” and that “necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention.”¹⁵⁶ The delineation of territorial and maritime boundaries and designation of archipelagic sea lanes are now among the priorities identified under the 13-Point Work Program that the DFA-MOAC took on after the dissolution of CABCOM-MOA.

Having ratified the LOSC, the Philippines is bound to make adjustments to its domestic laws to incorporate the necessary changes prescribed by the Convention.¹⁵⁷ These include the reclassification of the “internal waters” into archipelagic waters subject to innocent and archipelagic sea lanes passage and the adoption of a 12-nautical mile limit for the territorial sea. On balance, it would still be in the best interest of the Philippines to work towards compliance with the LOSC to enhance the legitimacy of its

¹⁵⁴ United States Office of the Geographer, op. cit. note 11, pp. 50-51.

¹⁵⁵ Kwiatkowska, p. 23.

¹⁵⁶ *Multilateral Treaties Deposited with the Secretary-General* [cited May 7 2005]; available from <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXI/treaty6.asp>.

¹⁵⁷ Articles 309 and 310 of LOSC expressly prohibit state parties from making reservations or exceptions that contradict or cause to exclude or modify the legal effect of the LOSC.

boundaries and enforceability of its rights over its maritime territory. The final determination of its boundaries and the delimitation of the maritime zones consistent with the limits prescribed by international law are requisite elements for the optimal utilization of its resources and for clear and effective exercise of enforcement powers in each maritime zone in accordance with the LOSC.

Lack of time-bound targets.

EO 186 (1994) mandated the CABCOM-MOA to develop “a comprehensive action plan to implement the United Nations Convention on the Law of the Sea.” It will appear, however, that the present National Marine Policy fall short of the expected action plan because it did not identify specific and prioritized activities to be pursued. The 13-point work program developed later by the CABCOM-MOA was a significant initial step but it still lacked consistency as these activities have yet to be integrated into the plans, programs, and projects of marine-related government agencies.

Need for balanced and coordinated maritime sector development.

Ocean-based economic activities deserves better attention, particularly, fisheries, ports, shipping, tourism, energy, and mineral resources development. While certain programs are already being implemented by the various sector agencies promoting these ocean-based sectors, the NMP does not identify the mechanism through which these activities are going to be harmonized.

Clearly defined policy objectives for coastal area and marine area management.

The NMP should clearly define its policy objectives for coastal area and marine area management. There is a close interaction between coastal and marine environments but there are differences in resource use patterns and policy objectives that apply in each zone. Coastal area management is primarily concerned with the preservation of the ecological balance of the fragile coastal ecosystems with the

overarching goal of ensuring equitable use of coastal resources for the benefits of coastal communities that rely on sustained benefits derived from coastal resources.

The Philippines has had a long experience in community-based coastal resources management which had been known to be generally successful. Most of the initiatives, however, have been limited in geographic scope and relied on donor-funding. Much has yet to be done in terms of replicating the successful management practices for adoption by the many coastal municipalities that have not yet adopted their respective coastal resource management plans. There is also a need for upscaling of coastal management intervention to manage contiguous waters shared by adjacent municipalities and provinces for more effective coastal governance. The current challenge for national agencies involved in coastal resource management is to enhance coordination of technical and financial support to the local government units and attain a harmonized adoption of coastal management strategies. Marine area management, on the hand, is aimed at optimizing utilization of the ocean resources and striking a balance among competing uses of the ocean space conscious of the ramifications of the individual and cumulative effects such uses.

Lack of public dissemination.

The NMP is public policy document which has to be made publicly available to ensure its adoption and achieve its objectives. It was not widely disseminated, however, among government agencies and other marine-related sectors because of a confidentiality issue pertaining to national territory that became the basis for the CABCOM-MOA to classify the whole policy document as "secret." This decision, however, limited the availability of information about the policy thus did not gain wide public support.

Lack of legal force.

The NMP suffers from lack of legitimacy among government agencies since the policy document does not take the form of a legal issuance prescribed under Philippine

laws.¹⁵⁸ Without a reliable legal mandate, the agencies could not be forced to adopt and develop plans and programs supportive of the NMP. The 13-Point Work Program, for instance, could be integrated into an executive issuance so that the concerned departments could channel resources to implement the priority activities.

X. Institutional Issues

DFA as the lead coordinating agency.

The lead role that the DFA takes in coordinating maritime and ocean policy should be reconsidered given the absence of a direct role in coordinating national development policy and programs. It has been observed that the DFA tended to implement the NMP in a foreign policy mode by putting more attention on the implementation of the LOSC and related agreements rather than giving equivalent attention on domestic maritime interests such as fisheries, shipping, tourism, energy and mineral resources. The DFA has traditionally given more attention to foreign relations aspect of the LOSC particularly on territorial boundary issues and implementation of related international agreements. This rigidity could be associated to the long-term tendency of the agency to operate along its traditional programs and services. In some countries, the lead role in ocean policy coordination is usually being held by an agency with the most extensive responsibility over ocean use and management, that is, either the Fisheries Department or Environment Department or an equivalent ministerial-level agency. In the case of the Philippines, National Economic and Development Authority (NEDA) can take the lead role where the ocean agenda could be pursued in a development mode within the framework of the national development agenda. Another advantage of this arrangement is that the planning agency is in a neutral position, thus more capable of making an objective decision in allocating resources among competing agencies. Under the leadership of the DFA, it appears that domestic interests in shipping, marine tourism, coastal and marine fisheries, and offshore development in the EEZ received less attention in the implementation of the NMP than foreign relations

¹⁵⁸ Batongbacal, "Karagatang Pilipino: A Critique and Proposal for Revision of the National Marine Policy of the Philippines," p. 15-34.

issues. The CABCOM-MOA TechCom policy agenda embodying the 13-Point Work Program addressed the critical issues of the time and were not designed to be a comprehensive, proactive and programmatic ocean policy agenda.

Lack of coordination and consultation mechanisms.

The NMP does not provide mechanisms for coordinating marine-related programs of the government and for stakeholder consultation and participation. The NMP does not on its own provide for consultative and coordination mechanisms to involve the major ocean management stakeholders. The CABCOM-MOA, which was originally tasked to formulate the NMP, did not consider institutionalizing these mechanisms to become part of a legislated ocean policy. The MARCs provided the means for sectoral participation was not an integral feature of the NMP and like the CABCOM-MOA, they are subject to changes as may be desired by the Chief Executive.

Monitoring and review mechanisms.

Another important issue is the absence of operational procedures to regularly monitor and review the implementation of policies carried out by the CABCOM-MOA. The CABCOM-MOA Secretariat has essentially assumed that once policy decisions are made, the agencies would incorporate such decisions into their sectoral programs.

Vertical integration.

The CABCOM-MOA had no built-in mechanism incorporating sub-national planning and decision-making bodies and processes such as the FARMCs, development planning councils and local government units including at the regional, provincial, and municipal/city levels of governance. The establishment of coordinative linkages with the local level institutions could enhance vertical integration with the national development planning process. By creating such linkages with the sub-national planning bodies, a viable consultation mechanism could be established through which the local government could meaningfully participate in policy-making and review with emphasis

on assisting the local government in carrying out its mandate to manage and protect the coastal area.

Coordination of policy reforms with the legislature.

The CABCOM-MOA has not established formal coordinative relationship with the legislature. The proliferation of laws that without careful consideration of existing ocean laws, policies, and issuances has often contributed to resource use conflicts and overlapping jurisdictions between and among the national agencies and local government. The PLLO under the Office of President and LEDAC provide the means to coordinate the legislative reforms in the ocean sector with the relevant legislative committees of the Senate and Congress. In particular, LEDAC offers a viable mechanism through which ocean concerns could be advanced given its powers to influence national development priorities. LEDAC may also lend to better vertical integration given its mandates to ensure that regional development plans and environmental principles are integrated into the national development plan or the MTPDP.

Resource and technical capacity limitations.

The CABCOM-MOA Secretariat was constrained by the lack of qualified technical staff, non-permanent staff positions, management capability, and financial resources to effectively operate and undertake policy researches for the purpose of setting the ocean policy agenda. This condition was especially important when MOAC was considered merely as a minor unit of the DFA but even as MOAC was upgraded as an attached agency, inadequate funding support still posed certain operational limitations.

Internal organization.

The TechCom was organized around very specific policy issues: National Territory and Maritime Jurisdictions, Piracy, Cooperation Arrangements, Fisheries, and

National Marine Policy. This logically proceeds from the policy issues identified in the 13-Point Work Program but organizational structure tend to be self-limiting in terms of the possible range of issues that can be dealt by each sub-committee.

Ambiguous policy-making linkages.

The relationship between the CABCOM-MOA and the MTPDP national planning process was not clearly defined. Its relationship with LEDAC and the Cabinet Cluster System have not been clarified either. This has serious consequence on the ability of CABCOM-MOA to carry out its policy decisions. The CABCOM-MOA is further weakened by the status of DFA being in the same level of authority as most of members of the CABCOM-MOA. The power relations within the CABCOM-MOA did not place the DFA in a position to exercise significant level of control to ensure that the activities sanctioned by the CABCOM-MOA would be integrated into the programs and projects of the relevant agencies. For instance, the CABCOM-MOA attempted to distribute the financial burden of the Monitoring, Control, and Surveillance System Project but did not progress due to lack of funding support from the agencies.

Under the existing arrangement, activities recommended by the CABCOM-MOA in support of the National Marine Policy are actually extraneous to the activities that agencies commit to implement under the MTPDP. At end of the MTPDP implementation period, agency performance is assessed against the respective targets that were committed at the beginning of the planning cycle. This practice compels agencies to purposively channel resources into those identified activities thus leaving little opportunity for reallocation to any additional activity approved by the CABCOM-MOA. This suggests that the likelihood of implementing an ocean-related program will depend largely on its inclusion in the MTPDP. The 13-Point Work Program should have been translated into programs and included as components of the MTPDP/MTPIP. This course of action will not require a major overhaul of the prevailing national development process. The valuable experiences gained from the coordination and harmonization process through the CABCOM-MOA will serve as basis for the continuing collaborative efforts toward achieving an integrated ocean management.

The NMP policy objectives are broad and are not in the form of specific programs with realistic time frames of implementation. The 13-Point Work Program can be considered as a mere listing of ocean policy priorities but there are no specific implementation plans indicating the time frames, distribution of agency responsibilities, and the possible sources of financial support.

Support from highest leadership.

The highest level of control that Chief Executive exercises in determining national development priorities is very critical for the ocean sector. The level of importance accorded to ocean policy depends so much on the level of importance that the Chief Executive gives to the ocean sector. The role of the Chief Executive in advancing ocean interests nearly completely determines the extent of progress in ocean development and management. The low importance that the ocean sector receives is highly correlated to the development agenda drawn by the Chief Executive and unless the economic potential and national security value is understood, meaningful progress in ocean management may not be forthcoming.

XI. Alternative Institutional Structure Models for Coastal and Ocean Management

In evaluating options for institutional designs, the following shall be used as criteria:

1. The organizational structure encourages the coordination among the national agencies, civil society, local government, and scientific community.
2. The institutional design must enhance integration both horizontally and vertically. Horizontal integration refers to a process in which sectoral agencies, with potentially overlapping jurisdictions and conflicting functions over certain uses of the ocean space, work towards clarification of their respective roles and establish cooperative arrangement in certain areas. Vertical integration, on the other, means that the relevant policy-making bodies and resource user groups are vertically linked to the national policy-making process to achieve consistency in the application of national policy

and local resource management issues are addressed in accordance with the principle of local autonomy.

3. The coordinative body must be well-integrated into the national development planning and programming process to ensure that resources are directed to components of ocean policy where public investments are necessary. This shall provide the inter-agency body with the necessary policy handle to influence agency plans and program, and allocate the resource requirement.
4. The inter-agency body must have a system for data collection and sharing of information including updates on proposed ocean policy administration reforms to resolve persisting administrative conflicts and overlaps arising from national legislation and other administrative issuances.
5. The inter-agency body must be supported by the highest level of authority either by the Chief Executive or through a legislative authority. It is essential that the coordinative function performed by the inter-agency committee must be viewed by its member agencies as a legitimate process.
6. The inter-agency committee must have access to scientific information through a multi-disciplinary network of research institutions, scientists and policy experts.
7. Consultative mechanisms must be established, where such mechanisms do not exist, at all levels of governance: national, regional, and city/municipal. At the national level, the inter-agency committee may be utilized apart from similar inter-agency consultative mechanisms already in place. At the sub-national level, stakeholder consultation mechanisms may be used, including other local policy advisory bodies created by related laws such as the FARMCs.

There is a plethora of alternative institutional design options found in previous studies. The following section discusses 3 possible options selected based on 2 assumptions:

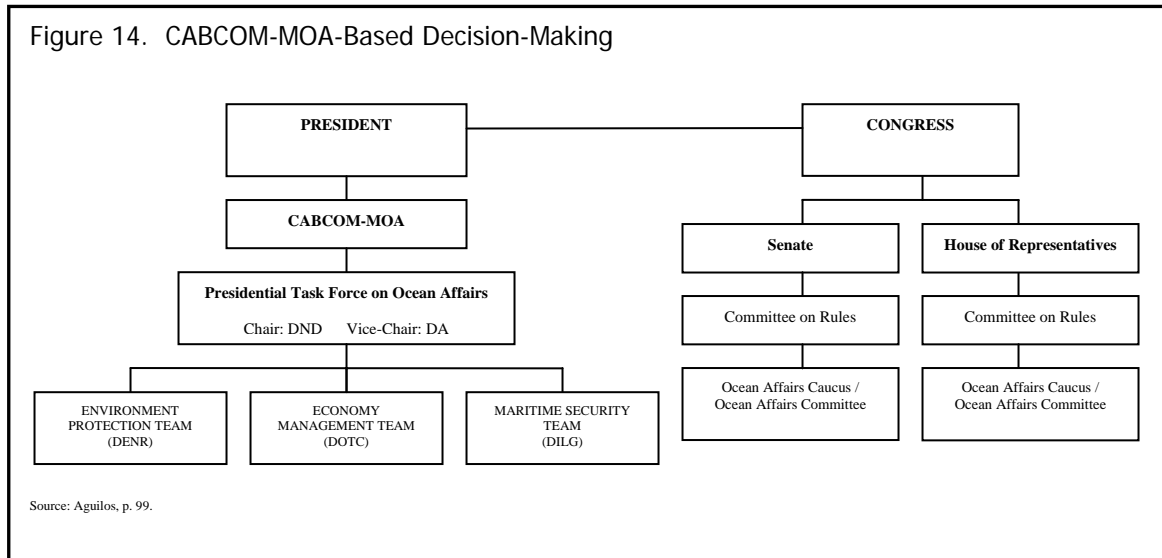
1. The Philippine government will continue to enforce “scrap and build” policy discouraging the creation of new government office without abolishing an existing office that has become ineffective or obsolete.
2. The alternative structure builds on existing institutions without the need to create new government offices. Reorganization is being proposed to enhance coordination and flow of communication to achieve consistent policy decisions.

Model No. 1: CABCOM-MOA-Based Decision Making System¹⁵⁹

This model retains the CABCOM-MOA as the coordinative body performing policy-making and advisory functions (Figure 13). The CABCOM-MOA remains under the direct

¹⁵⁹ Maribel Aguilos, "Designing an Institutional Structure for Ocean Governance: Options for the Philippines," in *The Ocean Law and Policy Series* (Quezon City, Philippines: Institute of International Legal Studies, University of the Philippines Law Center, 1998).

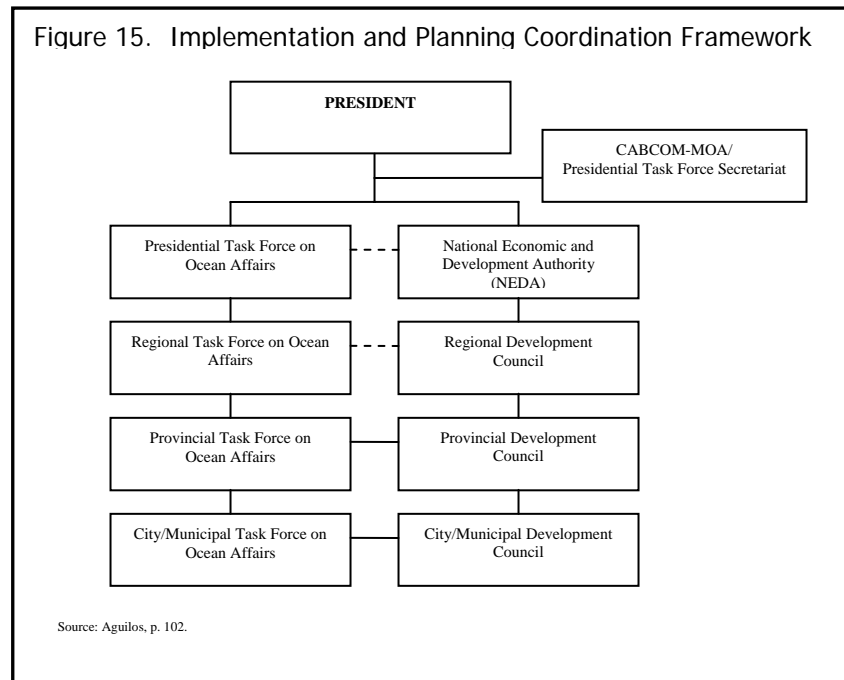
authority of the Office of the President. The model proposes to transfer the lead role under 3 possible options: Executive Secretary or Presidential Assistant for Ocean Affairs, National Economic and Development Authority, or the National Security Council. The model also retains the MARCs and recommends the establishment of a MARC Desk to facilitate the flow of scientific information generated by the MARCs to the CABCOM-MOA as basis for modifying or developing policy decisions.



The PPLO will monitor developments on the legislative measures proposed by the CABCOM-MOA. This is complemented by the establishment of a Joint Committee on Ocean Affairs consisting of representatives from the Houses of Senate and Congress, or a separate committee will be created in each chamber for better coordination of legislative agenda for ocean management.

A Presidential Task Force on Ocean Affairs headed by the Defense Secretary is intended will serve as the direct link of CABCOM-MOA to the sectoral agencies. The Task Force will be organized into 3 sub-groups corresponding to the major themes of the NMP: Environment, Economy, and Security. Each group will be headed by DENR, DOTC, and DILG, respectively. The task force will be replicated at the sub-national level to provide a bottom-up link for local-level participation in the national ocean planning process (Figure 14). The regional, provincial, and city/municipal task force on ocean affairs would participate in formulating coastal and marine development action

plan and provide technical inputs to the respective development councils. It is recognized that the impact of the task force would be biased in favor of coastal area management given the defined management jurisdiction of the local government units.



The model attempts to incorporate mechanisms to achieve vertical integration and legislative coordination. There is some ambiguity, however, on the operational relationship between the Presidential Task Force and the CABCOM-MOA. Apparently, the purpose of the Task Force is to include the local planning institutions in the national planning process but considering that local government responsibility is centered on coastal management, it may be more suitable to place the whole sub-national task force structure under a CABCOM-MOA Committee instead of putting an additional tier of authority under the CABCOM-MOA. The local task force may coordinate directly with the CABCOM-MOA Secretariat while the specific policy concerns may be handled by a Coastal Area Management Committee to be established among the committees of the CABCOM-MOA. Furthermore, the composition of the task force at the sub-national needs more elaboration. It can be theorized that the composition of such task forces would consist of the regional units of the national agencies and such other entities that

have been established by other laws such the FARMCs under Republic Act 8550 or the Philippine Fisheries Code.

The lead roles that DOTC and DILG may need to be further rationalized. Despite the important role that shipping and maritime transportation play in the national economy, the economic potential of the fishery resources in the EEZ remains largely underutilized due to lack of private and public investment for expansion of the commercial fishing sector operations. With regard to security, the DILG may not possess the technical and operational capability to address maritime security issues, which largely involve international relations. Local government responsibility in the coastal area is limited only to the 15-km band of water marine waters from the coastline beyond which the local government has neither the jurisdiction nor the capability to deter foreign threats. Given that national security issues are fundamentally inseparable from foreign relations, the lead role must thus be held by the DFA with the assistance of DND.

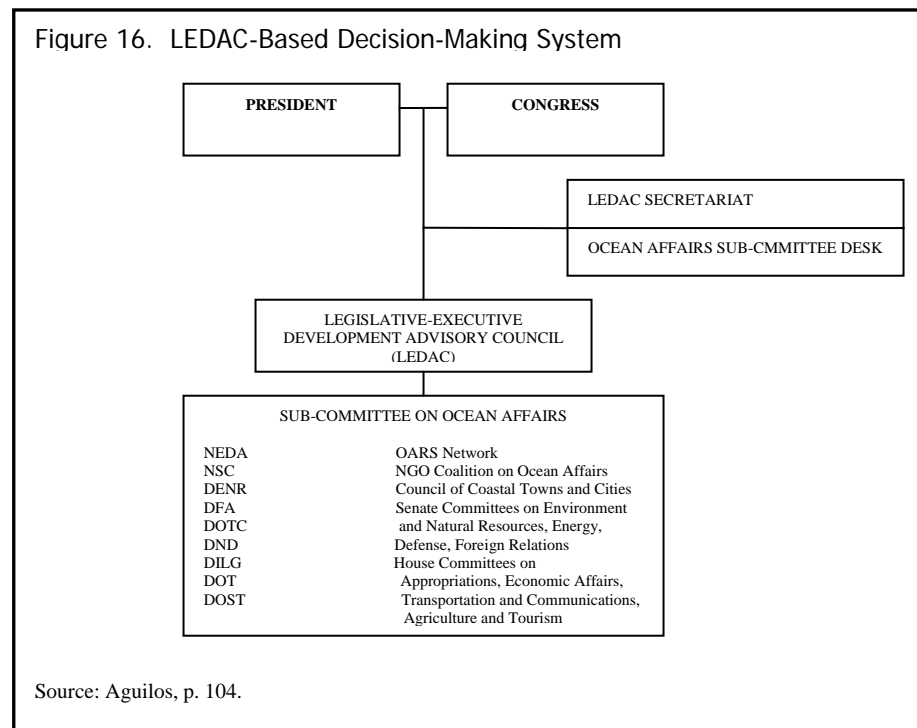
The model does not specify the means by which the CABCOM-MOA policy-making process would be integrated with the national development planning process. The coordination between Presidential Task Force on Ocean Affairs and NEDA may not be adequate to effect a substantial change to the predominantly land-based development planning that characterize the present development planning process.

Model No. 2: LEDAC-Based Decision Making System¹⁶⁰

This model is based on the LEDAC mechanism which allows the creation of a sub-committee under Sec. 2 of RA 7640 (Figure 15). The Sub-Committee on Ocean Affairs would be composed of core national agencies, research community, NGOs, federation coastal cities and municipalities, and representatives from related committees of the Houses of Senate and Congress. An Ocean Affairs Sub-Committee Desk will be

¹⁶⁰ Aguilos (1998), p. 104.

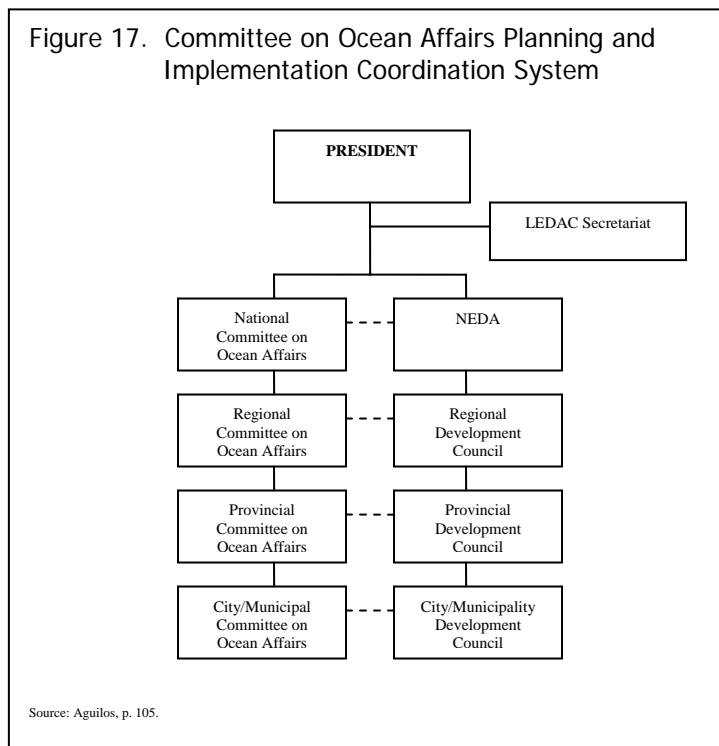
established under the LEDAC Secretariat to provide technical and secretariat support to the Sub-Committee.



As in Model No. 1, the Sub-Committee on Ocean Affairs will be complemented by sub-national committees on ocean affairs which will be created in each administrative level to link the sub-national level planning to the national level planning as well as to serve as a consultative mechanism (Figure 16).

The strength of the model depends on the presence of a built-in mechanism for Executive-Legislative Coordination on ocean policy reform initiatives in the legislature. The Sub-Committee directly reports to the Office of the President, which could help ensure that ocean programs would receive priority attention. The model also provides for coastal cities and municipalities to participate in formulating policies for the coastal area management. The proposed structure, however, may have inadvertently excluded certain agencies with very crucial roles such as DA, DOE, and DBM. The Sub-Committee does not have a discernible linkage with NEDA and thus with the national planning.

Figure 17. Committee on Ocean Affairs Planning and Implementation Coordination System



Model No. 3: NEDA-Based Inter-Agency Council¹⁶¹

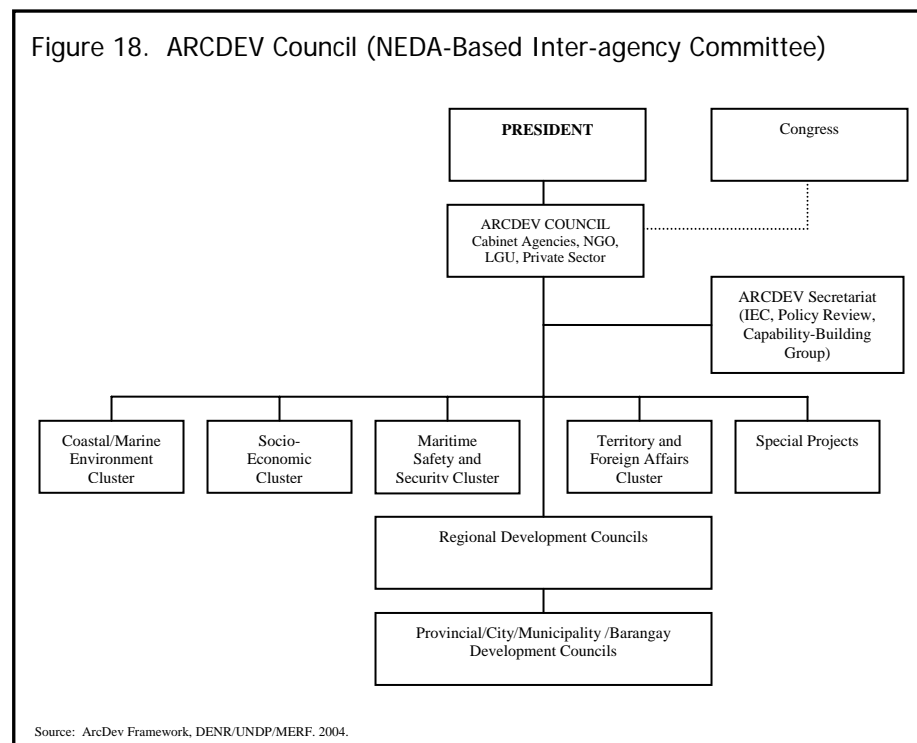
This model has most of the main features of the CABCOM-MOA-Based organizational structure. The inter-agency coordinating council or ArcDev Council consists of ocean-related national agencies including representatives from the private sector, LGUs and NGOs. The council will be chaired by Socio-economic Planning Secretary (NEDA) which can help facilitate integration of ocean planning with the MTPDP process.

The proposed structure draws largely from experiences derived from the CABCOM-MOA. The model features the establishment of linkage with the legislature and recognizes the importance of integrating coastal and marine programs into the MTPDP

¹⁶¹ DENR, "ARCDEV: A Framework for Sustainable Philippine Archipelagic Development," Department of Environment and Natural Resources. (2004).

as well as into the regional and local development plans through corresponding local development councils. The ArcDev Council is organized into five policy groups: Coastal/Marine Environment Cluster, Socio-Economic Cluster, Maritime Safety and Security Cluster, Territory and Foreign Affairs Cluster, and Special Projects Cluster. The members of each team have to satisfy a minimum qualification of Director to guarantee a higher level of support from the agencies.

An important aspect of the proposed design is the provision for the eventual transfer of the secretariat function with the intention of fully integrating ocean policy planning into the national planning process. A parallel secretariat would be established by the private sector and civil society groups.



Among the 3 models reviewed, the ArcDev model meets the essential requirements for a comprehensive and integrated ocean governance framework. The successful operation of the ArcDev model will partly depend on how the following issues are addressed:

1. There are varied levels of technical capacity within the local government to undertake coastal management planning. Most coastal provinces have not established coastal management offices and out of more than 800 coastal municipalities, less than 100 have developed coastal management plans. Thus, capacity-building is necessary if meaningful participation in policy-making is expected from the local government.
2. There is need for strong and consistent advocacy by the sectoral agencies for inclusion of the ocean development agenda in the national development agenda of the President to ensure that there is a better leverage or inclusion of ocean-related programs and policies in the MTPDP. While ocean planning has yet to be mainstreamed in the national development planning process, the support coming from the highest leadership is needed to prevent the ocean programs from being glossed over during the planning process.
3. Full integration of ocean planning with the national development planning process will require fundamental reforms in existing planning organization and procedures. Given the inter-sectoral nature of the ocean issues, internal organizational reforms and capacity-building to develop technical expertise and adoption of a multi-disciplinary perspective within the NEDA technical staff is necessary in carrying out its new functions in relation to ocean planning. The role of the inter-agency committee for maritime and ocean affairs (e.g. ArcDev Council or CABCOM-MOA) must be recognized as a legitimate party in the planning process and operational linkages with the existing sector-based Inter-Agency Planning Committees must be established.

XII. Conclusion and Recommendations

The National Marine Policy made an important contribution to the development of national ocean policy in the Philippines by introducing a revolutionary perspective of national development that puts greater emphasis on the need to develop the ocean resources as a major source of economic growth. The potential of archipelagic development, however, has not been fully realized due to institutional constraints and policy inconsistencies that hinder the attainment of the ocean policy objectives.

The CABCOM-MOA, during its operational years, have increasingly gained legitimacy among the agencies as the highest authority in shaping the direction of Philippine ocean policy. Its abolishment, however, can be viewed as a reversal of government efforts towards integrated and coordinated ocean governance. But even prior to the abolishment of CABCOM-MOA, there was a notably slow progress in the implementation of the ocean-related programs attributed to lacking link between the national ocean planning process with the overall national development planning. The experience of the CABCOM-MOA clearly show that ocean policies and programs have to be well-integrated into the national planning and programming priorities and spelled out in the Medium-Term Philippine Development Plan. Inadequate resources for ocean programs and projects appear to be the major impediment explaining the slow progress in the implementation of the NMP work program.

Currently, ocean policy coordination is solely performed by the Maritime and Ocean Affairs Center but having no clear authority and appropriate coordination mechanism, coordination takes place only on an ad hoc basis limiting the ability of MOAC to carry out its function. It is, therefore, recommended that an inter-agency coordinative mechanism must be re-established to fill the institutional gap that was left by the defunct CABCOM-MOA. The re-establishment of such mechanism will additionally require addressing the need to enhance vertical integration by linking sub-national planning mechanisms with national ocean policy formulation and decision-making. This will entail the establishment of an institutional linkage between the national coordinative body and the sub-national planning bodies at the regional level and where appropriate

at the city or municipal level through a cluster of local government units. The role of the inter-agency body in the national development planning process must be clearly defined to ensure that ocean programs and projects are allocated the necessary resources as well as to prevent the duplication of services and reduce resource competition among agencies. A close institutional linkage with the policy and scientific community need not be overemphasized. The inter-agency body must also maintain regular coordination with the legislative department on proposed policy reforms to prevent the passage of laws that may contradict existing policies.

Notwithstanding the institutional reforms suggested above, certain policies particularly those that concern the national territory must be revisited with the view of harmonizing those policies with the Law of the Sea Convention. These include policies defining the limits of the territorial sea and archipelagic waters. There is also a need to expedite the passage of the bill adjusting the baselines and points. Moreover, there must be a national legislation that will provide for a consolidated regime for the passage of foreign ships including warships and military aircraft in those maritime zones and within the designated sea lanes or routes normally used for international navigation.

Perhaps the greatest challenge in Philippine ocean governance is the lack of constituency for ocean governance reforms. In the absence of a constant advocacy effort for those reforms, the ocean sector may continue to receive low importance among the national development priorities. This is a challenge to all the national agencies with long-standing mandates for ocean management and development to bring the ocean agenda at the forefront of national development priorities.

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