

IHB File No. S3/3057

CIRCULAR LETTER 10/2000

22 February 2000

**SOLAS CHAPTER V :
DEFINITION FOR NAUTICAL CHART AND
USE OF THE TERM 'OFFICIAL'**

References: IHB Circular Letter 49/1999 of 28 October 1999
IHB Circular Letter 54/1999 of 26 November 1999

Dear Sir,

The above Circular Letters requested Member States to review the proposed amendments to SOLAS Chapter V and to advise the IHB of their comments. In particular, Member States were requested to vote for or against the retention of the term 'official' in the definition of nautical charts in Regulation 2.

Of the 41 responses received, 21 Member States are in favour of the removal of the term 'official' from all Regulations in Chapter V of SOLAS and 20 Member States are in favour of the retention of the term. At least two of the Member States in favour of retaining the term have indicated that they are not adamant that the term should remain and that they would be equally happy if it was removed. One Member State is undecided and this vote is being treated, provisionally, as being against the removal of the term 'official'.

The additional comments of Member States, that were included in the returns, have been summarised and are attached for your information.

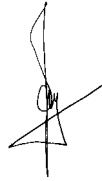
It is apparent that a consensus on this issue will be difficult to obtain before the International Maritime Organisation (IMO) Maritime Safety Committee (MSC72) Meeting in May 2000. Provision for a meeting to enable Heads of Delegations and their advisors to discuss this issue has been made for a date and time immediately preceding the 2nd Extraordinary I.H. Conference to be held in March 2000. Notice of this meeting is therefore given as follows:

Notice is given of a Meeting for the Heads of Delegations and their Advisors who wish to discuss the Member States' responses to the proposal to delete the term 'official' when referring to nautical charts in Chapter V of the Safety of Life at Sea Convention (SOLAS). The Meeting will be held in the Conference Hall (CCAM), Monaco at 14:00, on Sunday, 19 March 2000.

The importance of achieving some form of uniformity in approach by Member States cannot be stressed enough. Members of the IHO Legal Advisory Committee have been invited to attend the meeting to assist delegates if necessary. In addition, although simultaneous translations will not be available, French and Spanish speaking Professional Assistants from the IHB, who are familiar with the correspondence, and the issue in general, will be available to assist delegations should the delegations so wish.

On behalf of the Directing Committee

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Neil GUY', written over a faint, stylized graphic element that resembles a compass rose or a similar navigational symbol.

Rear Admiral Neil GUY
Director

Annex: Responses to CLs 49/1999 and 54/1999

MEMBER STATES RESPONSES TO IHB CLs 49/1999 and 54/1999

Those Member States in favour of removing the term 'official' in reference to nautical charts in Chapter V of SOLAS;

Bahrain, Canada, Denmark, Estonia, Finland, Germany, Iceland, India, Iran, Italy, Japan, Netherlands, New Zealand, Norway, Pakistan, Peru, Russian Federation, South Africa, Thailand, Tonga, and the United States.

Those Member States in favour of retaining the term 'official' in reference to nautical charts in Chapter V of SOLAS;

Argentina, Australia, Brazil, Chile, China, Colombia, Cuba, (Cyprus), Ecuador, France, Greece, Monaco, Oman, Portugal, Singapore, Spain, Sweden, Tunisia, Turkey, and the United Kingdom.

Summarised Comments by Member States

I. Member States in favour of the removal of the term 'official'

Bahrain

The term 'official' is implied in the Regulations as nautical charts and publications are published by a Government Authority.

Canada

No further comment.

Denmark

Denmark would prefer to have 'official' deleted, Denmark can accept that the word 'official' is retained, if this is preferred by a majority of Member States.

Estonia

No further comment.

Finland

The term 'official' in Regulations 2, 9, 19, 27 is not necessary.

Germany

The comprehensive nature of the definition developed at NAV 45 makes use of the term 'official' superfluous. However, the Federal Maritime and Hydrographic Agency believes that no further proposal to the present texts should be submitted to MSC 72. A common position on this matter should be developed at MSC 72 in a splinter group with participants of the Member States concerned.

Iceland

No further comment.

India

The use of the term 'official' is not recommended. The proposed wording establishes that the nautical charts or nautical publications are products produced under the authority of the appropriate Government. The use of the term would imply that any agency, private or public, with or without consideration to the aspects of the safety of navigation and the stringent standards and specifications

laid down by the IHO/IMO, could produce cheaper products, which may be a hazard to safety of navigation. The use of 'official nautical charts' along with 'nautical charts' is likely to create confusion among mariners who are used to nautical charts and publications, which are produced under the authority of the Government.

Italy

It is not the word 'official' that implies that a State assumes responsibility for any error in the provision of nautical charting. This is a requirement in accordance with the wording that a nautical chart is issued by a Government, an authorised Hydrographic Office or other relevant Government institution. The term 'official' does not add to this requirement and may have a different connotation for different Governments. The use of the term 'official' could limit the legal options open to a State in terms of its own legislation. Furthermore, Regulation 9 clearly addresses the obligations and authority of Governments for hydrographic services.

Iran

Fully supportive of the deletion of the term 'official'.

Japan

The draft revision of SOLAS Chapter V includes a number of epoch-making contents, such as the inclusion of the definition of nautical charts, the role of hydrographic services, paper chart equivalency between ECDIS/ENC and others. We believe, therefore, that the adoption of Chapter V during the next meeting of the IMO Maritime Safety Committee (MSC72) scheduled for May and to subsequently come into force in July 2002, is a top priority. In order to secure navigational safety we strongly believe that all charts that are enacted by law as a carriage requirement for ships, must be produced/issued under the authority of the Government. This will be achieved by the draft wording even if the term 'official' is deleted.

Netherlands

No further comment.

New Zealand

Acceptance of the deletion of the term 'official' is contingent on the continued inclusion of the wording which clearly indicates that nautical charts and nautical publications are issued by a Government institution, or an authorised Hydrographic Office.

Norway

No further comment.

Pakistan

No further comment

Peru

There should be only one definition for a nautical chart.

Russian Federation

No objections to delete the term 'official'

South Africa

No further comment

Thailand

The wording of the new Regulation adequately ensures that the charts and publications will be under the authority of a Government. In the interests of safety of navigation paper nautical charts should also be carried when ENCs or RNCs are used.

Tonga

No further comment.

United States of America

The US supports the progress made at NAV 45. The revised definition of nautical charts gives a clear and precise explanation. It is extremely important to maintain clarity and consistency, and to avoid any compromise in interpretation by the inclusion of the term 'official'. It is not possible to modify the term and its inclusion would introduce the opportunity of misinterpretation.

II. Member States not in favour of the removal of the term 'official'**Argentina**

The IHB should only report to the IMO after consultation with the IHO Member States

Australia

The revised wording makes the use of the term 'official' superfluous. The term is, however, commonly used to confer 'government approval'.

Brazil

It is important to maintain the term 'official' to emphasise the fact that the construction and maintenance of nautical charts and publications must be a responsibility of each Government's Hydrographic Office.

China

No further comment.

Chile

This gives importance to the responsibility of States in the supply of nautical charts and nautical publications of the waters under their jurisdiction. The UN Convention on Law of the Sea (UNCLOS) requires that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State. This also applies to Article 6 of this Convention. Chile feels that SOLAS should use the same terminology as UNCLOS.

Colombia

The IHB comment that the use of the term 'official' could authorise a non-governmental institution to produce non official charts or nautical charts is incorrect. On the contrary the lack of the term 'official' would confuse the maritime community in the difference between a nautical chart produced by a non-governmental organisation and a chart published under the authority of a Government of an IHO Member State.

Cuba

The removal of the term 'official' will not prevent the use of non-Governmental charts. The use of the term will enhance the products produced by the Government.

Cyprus

All nautical charts should remain within the domain of the Government. It is not clear whether the deletion of the term 'official' will ensure this.

Ecuador

Because the national authority should survey the bathymetric information of the waters adjacent to the coast of a State and the publication of the corresponding nautical chart has an official character, this will protect the intellectual property of the information contained in the nautical chart.

France

It is the Governments' responsibility to supply and update nautical charts. They must be published in the name of and under the control of the Governments. In France the term 'nautical chart' is already used by most private publishers for their publications and can no longer be reserved only for publications produced by Hydrographic Offices. The qualifying term is therefore essential to designate and distinguish publications issued by the Government-recognised hydrographic services. If the term 'official' causes difficulty because of certain uses of this term in English speaking countries, then another, more appropriate, term should be sought unless the English wording 'nautical chart' is sufficiently explicit in English. Other equipment referred to in SOLAS is not designated 'official' as this equipment is not generally the responsibility of a Government.

Greece

No further comment.

Korea (Republic of)

No further comment.

Monaco

If the adjective 'official' is not confused with 'obligatory' or 'exclusive', this qualification is both the simplest and the most explicit to indicate that the nautical document in question (chart or other) has been validated by a competent service belonging to a State Authority.

Oman

No further comment.

Portugal

No further comment

Singapore

The term 'official' is generally understood to mean issuance by Government or approval given by the Government. Singapore is, therefore, of the opinion that the term should be retained.

Spain

Spanish law requires that cartographic production by the State be classified as 'official'.

The retention of the term 'official' clarifies and gives consistency to the many interpretations. The IHO should advise Hydrographic Offices to warn the mariner to use only 'official' nautical charts.

Sweden

No further comment.

Turkey

DNHO prefers the draft text (NAV45/5) and believes it necessary for safe navigation for nautical information to be under the control of the Government Authorities. The nautical charts should therefore be termed 'official'.

United Kingdom

On balance, the word 'official' should be retained. To propose its deletion may result in more acrimonious debate at MSC which would further discredit the hydrographic community in the eyes of the IMO delegations.

BUREAU COMMENT

The Bureau feels that great progress has been made by combining the two definitions for nautical chart into one definition in the proposed Regulation 2. This appears to resolve the majority of the reservations of IHO Member States in regard to the nautical chart. The removal or the retention of the term 'official' in the definition of the nautical chart is, hopefully, the last outstanding issue that has to be addressed.

The Bureau is of the opinion that if the proposed wording for the regulation is adopted, then the retention of the term 'official' is unnecessary for the control by a Member State of its national charting activities. Regulation 9 requires Member States to undertake the service and goes on to detail exactly what such a service should be. As has been stated the Bureau feels that the retention of the term could infer that non-official nautical charts existed, whereas the removal of 'official' meant that all nautical charting was under the control of the Government. It is the opinion of the Bureau that, if Regulation 2 is approved in its proposed form, then the overall interests of safe navigation will be not be affected by the removal or the retention of the term 'official'.

Some Member States, however, will experience problems should the term be removed and equally other Member States will experience problems should it remain. It is hoped that, in the interest of all Member States, a solution will be found before the MSC72 Meeting in May 2000.
