

IHB File N° S3/1401/WG

CIRCULAR LETTER 22/2001
26 April 2001

AMENDMENT OF RESOLUTION A 6.9
RELEASE OF TIDAL DATA TO COMMERCIAL ORGANIZATIONS

References:

1. CL 53/1992
2. CL 39/1994
3. CL 64/1994
4. CL 6/2001

Dear Sir,

You may recall that Member States were requested to vote on amendments to paragraphs 1.4.5 and 1.4.6 of IHO Resolution A 6.9 "Release of Tidal Data to Commercial Organizations" (cf. Reference 4).

The Bureau is grateful to the 26 Member States who responded. Thailand voted against the proposed amendments; France voted in favour, provided that the French text of paragraph 1.2 is corrected and brought into line with the English version. As the required majority of affirmative votes of not less than one third of the Member Governments (i.e. 22 in this case; cf. Convention on the IHO, Article VI, paragraphs 5 and 6) has been attained, the amendments are adopted.

Please find attached herewith a summary of relevant comments made by some Member States (Annex A) and the new text of Resolution A 6.9 (Annex B).

Change-pages for the IHO Resolutions (IHO Publication M-3) will be issued in due course.

On behalf of the Directing Committee
Yours sincerely,

Rear Admiral Giuseppe ANGRISANO
President

Annex A: Summary of Comments
Annex B: New text of Resolution A 6.9

SUMMARY OF MEMBER STATES' COMMENTS

(In reply to CL 6/2001)

N.B.: IHB Comments are in italics

FRANCE

The French text of the Resolution annexed to CL 6/2001 and the French text contained in IHO Publication M-3 do not correspond to that distributed under cover of CL 39/1994. Paragraph 1.2 MUST be corrected as, in its present form, the text does not make sense and does not correspond to the English version.

France will only agree to the proposed amendments if the above comment is taken into consideration.

NETHERLANDS

As SOLAS V no longer uses the terms **official** charts and **official** publications, it might be more consistent to refer to official tide tables and products as “officially produced” tide related products (by, or on the authority of ...). This would apply to paragraphs 1.4.2 and 1.4.6 of Resolution A 6.9 and might also affect several other Resolutions.

IHB: Aligning IHO terminology with that used in Conventions of other international organizations requires a decision by IHO Member States, as this will most probably affect numerous IHO Resolutions and Publications. It might be more suitable to discuss this in conjunction with a Conference Proposal submitted by The Netherlands.

NEW ZEALAND

Issues related to provision/exchanges of tidal data and intellectual property rights should be formalised within the context of bilaterals between hydrographic offices.

THAILAND

Does not agree with the proposed amendment of paragraph 1.4.5. Hydrographic Offices should have the right to produce, market and distribute ONLY their own tide related products. If they want to produce, market and distribute tide products which belong to other Hydrographic Offices, they must establish agreements or obtain permission from the producing Hydrographic Offices.

*IHB: Resolution 6.9 deals with the release of tidal data to **commercial** organizations. As far as the relationship between Hydrographic Offices is concerned, Resolutions A 3.4 and A 1.18 apply.*

A 6.9 RELEASE OF TIDAL DATA TO COMMERCIAL ORGANIZATIONS

1. Recommendations for a Strategy concerning the Release of Tidal Data to Commercial Organizations

1.1 Definition of a Commercial Organization

A "commercial organization" is an organization which sells or distributes products. *This definition does not refer to national authorities when they sell or distribute products in the context of their duties as a public service.*

1.2 Definition of Tidal Data

The term "tidal data" for this document includes any data leading to and including tidal and tidal stream predictions.

1.3 General considerations

In the interest of safe navigation, effective oil and hazardous material spill response, efficient search and rescue and improved environmental management, the following statements are intended as a framework for Hydrographic Offices to make arrangements with commercial organizations.

As the development of quality-assured tidal predictions is a complicated matter, comprehensive knowledge and experience of tidal theory and practice are absolute prerequisites.

Computer technology can provide valuable support in presenting tidal predictions to users in convenient forms. However, the methods to present such information must be applied in an appropriate manner or data quality may suffer. Some Hydrographic Offices may find it unnecessary to develop all the products which are desired by all users; some development may be left to commercial organizations.

1.4 Recommendations

1.4.1 The Hydrographic Offices should NOT be responsible for the correctness of any predictions developed and distributed by commercial organizations.

1.4.2 Official tidal predictions should be released by Hydrographic Offices only. Hydrographic Offices may, however, authorize recognized institutions to calculate and/or distribute these official predictions. Hydrographic Offices or these institutions authorized by them may release their own harmonic constituents, but not those of other Member States, as may be deemed appropriate.

1.4.3 Any product of a commercial organization should only be supplementary to obligatory official information required in terms of international conventions.

1.4.4 Authorized tidal differences or harmonic constituents should be supplied by the Hydrographic Offices for secondary stations.

1.4.5 In addition to the products outlined above, Hydrographic Offices should have the right to produce, market and distribute any tide related products.

1.4.6 Where applicable, commercial organizations should be allowed to distribute official tide related products with the permission of the producing Hydrographic Office.

2. Recommendations for Standards to be applied in connection with the Release of Tidal Data

2.1 Predictions used for primary stations should only be those provided by the Hydrographic Offices, unless *a specific agreement is made between an HO and some other body*.

2.2 For secondary stations, predictions based either on tidal differences or on harmonic constituents may be published, in all cases including the method, source, date of analysis and the relevant primary station. This applies to numerical as well as graphical representation.

2.3 If a Hydrographic Office believes that, by using information obtained from a commercial product, a danger to life, property or the environment may result, the Hydrographic Office should take such action as it may deem appropriate to fulfil its responsibilities in the field of maritime safety. This should not be construed, however, to mean that Hydrographic Offices have responsibilities for inspecting the products of commercial organizations (see Section 3 below).

2.4 Legal matters, matters of copyright and of charges to be paid are different in each country and are very complex. They are left to the discretion of each Member State.

2.5 Commercial organizations developing products *should* be required to state clearly on their products the following:

- i. That the information being presented does not replace obligatory navigation material.
- ii. That where the original data were provided by a Hydrographic Office, a disclaimer should appear that, as the Hydrographic Office has no control over the product, it cannot accept any responsibility for it, except for those parts of the product which are a complete and true reproduction of official predictions issued by the Hydrographic Office.

2.5.1 A sample product may be required to be made available to the Hydrographic Offices responsible and/or to each donating authority prior to distribution, to ensure the imposed conditions are honoured. The Hydrographic Offices concerned should respond within a mutually acceptable time scale.

2.5.2 The data remain the property of the donating agencies.

3. Recommendations for Standards to be applied in connection with the inspection of the products of Commercial Organizations

Inspection of commercial products by Hydrographic Offices *is not recommended* as examination may imply approval with its attendant responsibilities and liabilities.
