

Legal aspects of MSR involving sound production

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Disclaimer

The material in this presentation does not constitute legal advice, and should not be relied upon for use in individual situations.

Sound sources in the marine environment

Examples of man-made sources:

- military use of active sonar
- seismic surveys in oil and gas exploration
- engine and propeller noise from ships
- pile-driving
- pingers on gill nets
- marine scientific research

Concern about impact of sound on marine species

Examples of international responses:

- report of IWC's Scientific Committee in 2004
- reports by SCAR
- ASCOBANS – Resolution 4.5 (Aug 2003)
- ACCOBAMS – Resolution 2.16 (Nov 2004)
- ICES – AGISC report in 2005

MSR that introduces sound to the marine environment

Examples of sources:

- acoustic thermometry
- scientific seismic surveys
- scientific surveys using multi-beam sonar
- controlled exposure experiments (CEEs)

Treatment of sound in 1982 UN Convention on the Law of the Sea

“pollution of the marine environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;” [Article 1(1)(4)]

MSR that introduces sound to the marine environment

Article 246(5) - coastal State discretion to withhold consent if project:

- (a)** is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;
- (b)** involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- (c)** involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80;
- (d)** contains information communicated pursuant to article 248 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project.

A controlled exposure experiment (CEE) as an example

Consider **(d)**:

inaccuracy OR outstanding obligations

Consider **(c)**:

AIS construction OR operation OR use

Consider **(b)**:

drilling OR explosives OR harmful substances

Consider **(a)**:

direct significance / exploration and exploitation /
natural resources

Applicability of Article **246(5)(b)** to CEE

Coastal State discretion to withhold consent if project:

“involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;”

Applicability of Article **246(5)(a)** to CEE

Coastal State discretion to withhold consent
if project:

“is of direct significance for the exploration
and exploitation of natural resources,
whether living or non-living;”

Coastal State power to impose conditions if Article 246(5) is not applicable - possible sources

- **Article 249(1) or Article 248 ?**
- **Article 246(3):** imply a power to impose reasonable conditions re PPME ?
- **Article 246(8):** MSR not to unjustifiably interfere with coastal State exercise of sovereign rights and jurisdiction under LOSC ? (incl. **Article 65**)
- **Article 240(d):** MSR to be conducted in compliance with relevant PPME regulations «adopted in conformity with» LOSC ?

Coastal State PPME regulations

A variety of duties/powers re PPME exists in LOSC Part XII

More specifically, regarding pollution from vessels:

“Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.” [Article 211(5)]

Liability ?

Article 194(2) (amongst others): «States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment ...»

Article 263(3) and Article 235(1)

Dispute resolution

Conciliation procedure:

- (a) “The report of the commission, including its conclusions or recommendations, shall not be binding upon the parties.” [Annex V, Articles 7(2) and 14]

- (b) “... the conciliation commission shall not call in question the exercise by the coastal State ... of its discretion to withhold consent in accordance with article 246, paragraph 5.” [Article 297(2)(b)]

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