Marine Data Collection: U.S. Perspectives

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Disclaimer

- Personal views
- Based on public USG positions
Outline of Presentation

- What is marine scientific research
- Marine Scientific Research subject to LOS Convention Part XIII
- Marine Scientific Research not subject to LOS Convention Part XIII
- Other Forms of Marine Data Collection not subject to Part XIII
Marine Scientific Research

- U.S. Views
- What is MSR
- What MSR is subject to Part XIII, LOS Convention
  - What MSR does requires U.S. prior approval
  - What MSR not require prior U.S. approval
- What MSR is not subject to Part XIII controls
U.S. Views: What is MSR?

- General term most often used to describe those activities undertaken in the ocean and coastal waters to expand scientific knowledge of the marine environment and its processes
- Includes physical oceanography, marine chemistry, marine biology, scientific ocean drilling and coring, geological/geophysical research
- Also includes other activities with a scientific purpose
U.S. Views: Research

- Under international law, not all research in the marine environment is MSR subject to LOS Convention Part XIII rules and controls.
- As a matter of long standing U.S. national policy, MSR in U.S. EEZ is not subject to U.S. prior consent unless it falls within one of six categories.
MSR subject to U.S. Prior Approval

- Any portion conducted within U.S. territorial sea
- Any portion within U.S. EEZ
  - Is conducted within a national marine sanctuary or other marine protected area
  - Involves study of marine mammals or endangered species
  - Requires taking commercial quantities of living marine resources
  - Involves contact with the U.S. continental shelf
  - Involves ocean dumping research
MSR subject to Part XIII, LOS Convention (1)

- MSR is not defined in the LOS Convention, but its scope can be deduced from how MSR and other forms of research are treated in the Convention.
- "Research or survey activities" in the territorial sea is subject to express consent of the coastal State (article 19(2)(j)).
- Coastal State may legislate re innocent passage in the territorial sea re MSR and hydrographic surveys (article 21(1)(g)).
- MSR in territorial sea subject to coastal State consent (article 245).
MSR subject to Part XIII, LOS Convention (2)

- During transit passage of straits used for international navigation, foreign ships, “including marine scientific research and hydrographic survey ships” may not carry out “any research or survey activities” without prior authorization of States bordering the strait (article 40)
- Same rule applies to archipelagic sea lane passage (article 54)
MSR subject to Part XIII, LOS Convention (3)

- MSR in the EEZ and on the continental shelf is subject to coastal State consent, which is to be exercised subject to certain standards and qualifications (article 246)
MSR not subject to Part XIII controls

- MSR on the high seas is a freedom of the seas (articles 87 and 257)
- MSR in the Area may be conducted by all States and competent international organizations (article 256) exclusively for peaceful purposes (article 143)
Other Marine Data Collection

- U.S. view--following activities are not MSR subject to Part XIII rules
- Hydrographic surveys
- Military activities, including military surveys
- Operational oceanography
- Exploration and exploitation of
  - Natural resources
  - Underwater cultural heritage
Hydrographic Surveys

- Mentioned separately from MSR in articles 19(2)(j), 21(1)(g), 40 and 54, LOS Convention
- Literature agrees
Military Activities, including Military Surveys

- Articles 58 and 56(2) recognize military activities in EEZ are not subject to coastal State control
Operational Oceanography

- Gathering marine meteorological data not MSR subject to Part XIII as agreed at UNCLOS III
- Analogues is routine collection of ocean observations that are distributed freely and openly, and are used for the monitoring and forecasting of ocean state, weather (meteorology), and climate
Exploration and Exploitation

- LOS Convention has separate regimes for exploration and exploitation of natural resources and underwater cultural heritage (UCH)
- Natural resources addressed in Part V (EEZ), Part VI (continental shelf), Part XI (the Area), Part VII Section 2 (fishing)
- UCH are not natural resources and are addressed in articles 303 and 149
Summary

- Not all methods of collection of data about the oceans is MSR regulated by Part XIII, LOS Convention
- Means of collection are often the same
- Data collected may be the same or different
- The *parameters* collected and their *intended use* distinguish MSR from other forms of marine data collection
- Seeking to place all forms of marine data collection under coastal State control would deprive people of all nations of the benefits of free and open access to data that enhance safety and environmental protection