

Baltic Coastal Zone No. 10	
(73-82) 2006	Institute of Biology and Environmental Protection Pomeranian Pedagogical University Słupsk

THE LEGAL ASPECTS OF MARINE SCIENTIFIC RESEARCH IN POLISH MARITIME AREAS

Tomasz Górski

*Institute of Geography Pomeranian Pedagogical University
ul. Partyzantów 27, 76-200 Słupsk, Poland
tomasz_gorski1@poczta.onet.pl*

Abstract

The article presents the legal rules concerning the conduct of marine scientific research in Polish maritime areas by either Polish or the foreign researchers in the light of the international law and the relevant Polish national legislation. According to the 1982 United Nations Convention on the Law of the Sea the foreign researchers have to apply for an express consent of the respective Polish administrative board in order to conduct marine scientific research in Polish marine territory. In Polish exclusive economic zone the consent may be either express or implied. Poland is entitled to withhold, cease or suspend the consent only under certain circumstances determined in accordance with international law. Concerning Polish nationals no consent is required. The compare of Polish national legislation and appropriate regulations of the 1982 United Nations Convention on the Law of the Sea indicates a high degree of compatibility.

Key words: marine scientific research, Polish maritime areas, coastal state, foreign researcher, the Maritime Act, the UNCLOS

INTRODUCTION

The scientific research in the maritime areas under the coastal state's sovereignty or jurisdiction must be conducted under the conditions laid down by the acts of the international law and filling them relevant acts of the national legislation of the coastal states. The basic international act in this field is the 1982 United Nations Convention on the Law of the Sea (UNCLOS)¹. The main relevant Polish act is the Act on the Maritime Areas of Polish Republic and Marine Administration (the Maritime Act)², which includes to Polish maritime areas in art. 2 the internal waters, the territorial

¹ The Convention was signed in Montego Bay on 10 December 1982, for Poland in force since 13 December 1998, DzU 2002 Nr 59, poz. 543.

² Ustawa o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej z 21 marca 1991 r., DzU Nr 32, poz. 131.

sea and the exclusive economic zone³. The right to conduct maritime scientific research in these areas vary with regard for the fact whether the researchers are Polish or foreign entities. In the former case Poland has the absolute freedom to regulate their rights to conduct marine scientific research, while in the latter case the international law establish certain legal regime, protecting the rights of either the coastal state or the foreign researcher.

It must be however remarked that in the meaning of Part XIII of the UNCLOS (“Marine Scientific Research”) only such a research which concerns the marine environment and which is conducted within this environment – including the aircraft research – constitutes marine scientific research. Any scientific projects carried out from satellites, or carried out from vessels but not having for object the marine environment, or concerning the traces of human activity (e.g. underwater archeology) are not considered to be marine scientific research and consequently are not governed by the regime discussed in this article. Remarkably, even though Unit 5 of the Maritime Act is entitled “Scientific research” which suggests applicability to all scientific research, in fact it comprises regulations relevant to Part XIII of the UNCLOS concerning marine scientific research. It is additionally stressed by the fact that regulations on exploration of natural resources and exploration of the ship wrecks are comprised in separate Units 6 and 7 of the Maritime Act⁴. Concluding, the term marine scientific research means oceanographic investigations conducted within marine environment.

It should be emphasized too that the mere area where the freedom of scientific research still exists are the high seas⁵, which comprise according to art. 87 par. 1 of the UNCLOS all parts of the sea that are not concluded in the following categories of maritime areas: the exclusive economic zone, the territorial sea, the internal waters

³ The juridical character of the internal waters, the territorial sea and the exclusive economic zone is discussed further in the article. The other maritime areas distinguished in the UNCLOS are: the archipelagic waters, the continental shelf and the contiguous zone. At present, a governmental project of an amendment to the Maritime Act establishing Polish contiguous zone is under development. The establishment of this area would be of no importance for the conduct of marine scientific research even though it could broaden the geographical extent of the State’s rights over the exploration of underwater cultural heritage (according to art. 303 of the UNCLOS which states that within the contiguous zone the coastal state may presume that unauthorized removal of the objects of an archeological and historical nature found at sea would result in an infringement of its regulations concerning the coastal state’s rights in the zone).

⁴ It is regrettable that the regime established under art. 35a of the Maritime Act (exploration of the ship wrecks) is not applicable to the exploration of all underwater archeological sites in Polish maritime areas.

⁵ The freedom of scientific research in the high seas concerns merely the water column and the airspace above the bottom and does not extend to the seabed which may constitute: a) continental shelf of the coastal state extending beyond the limit of 200 nautical miles on which the regime of conducting the scientific research is the same as in the exclusive economic zone, with one exception: the coastal state must not withhold its consent if the research project is of direct significance for the exploration and exploitation of the natural resources (art. 246 par. 5 (6) of the UNCLOS), or b) so called „Area” (according to art. 1 par. 1 of the UNCLOS) laying beyond the limits of national jurisdiction and then only the International Seabed Organization and States parties to the UNCLOS are entitled to conduct the research (art. 143 of the UNCLOS).

and the archipelagic waters. All states, whether coastal or land-locked, may exercise this freedom, under condition that the high seas are reserved exclusively for the peaceful purposes⁶. The research must be carried out in compatibility with regulations adopted in the UNCLOS and other appropriate conventions (in particular with regulations in subject of protection of marine environment). However, the high seas areas do not exist in the Baltic Sea because of its size⁷. This sea is composed of the internal waters, the territorial seas and the exclusive economic zones of the coastal states, therefore no freedom of scientific research may be there exercised.

ACCESS TO THE RESEARCH BY THE FOREIGN ENTITIES

According to art. 28 and art. 29 par.1 of the Maritime Act the foreign entities entitled to conduct marine scientific research in Polish maritime areas are: foreign states, competent international organizations, foreign natural and juridical persons. It is noteworthy that art. 238 of the UNCLOS admits this right only to states and competent international organizations. It follows from this that the Maritime Act broadens the catalogue of the entitled entities to natural and juridical persons which are not involved by guarantees of the international law⁸. The right to conduct marine scientific research by these foreign researchers depends on obtaining the consent from the competent Polish administrative board. The relevant procedures vary significantly in the marine territory and in the exclusive economic zone.

The foreign researchers are obliged to comply certain conditions the scope of which is identical in all Polish maritime areas. According to art. 30 of the Maritime Act the foreign entities conducting scientific research in Polish maritime areas shall be required to:

- ensure the participation of Polish representatives in the research, including their presence on board research vessels and at other installations;
- inform the Minister of Transport and Marine Economy, at his request, of the results of the research;
- enable the Minister of Transport and Marine Economy, at his request, to have access to all data and samples derived from the research;
- inform the Minister of Transport and Marine Economy without delay of any major change in the research program;
- remove the scientific research installations and equipment without delay once the research is completed, unless a separate license to leave them has been obtained.

These duties of the foreign researchers resulting from art. 30 of the Maritime Act generally agrees with the duties of the researcher in the exclusive economic zone according to art. 249 of the UNCLOS. However, art. 30 of the Maritime Act does not set the requirement of submitting to the Minister preliminary reports (art. 249 par. 1 (b) of the UNCLOS). Moreover, it is not expressly stated that the participation of

⁶ Art. 88 of the UNCLOS.

⁷ The high seas may exist if the distance between the opposite coasts is longer than 400 nautical miles.

⁸ In the light of the UNCLOS the natural and juridical persons may conduct the research only under the authority of their native state.

Polish representatives in the project does not raise the obligation to contribute towards its costs (art. 249 par. 1 (a) of the UNCLOS). It is submitted that Poland could establish different conditions for the foreign researchers conducting their activities in the marine territory.

The research in Polish marine territory

The marine territory of Polish State is composed of the internal waters and the territorial sea. The general rule concluded in art. 28 of the Maritime Act states that “scientific research in Polish internal waters and territorial sea may be carried out by States and foreign natural or juridical persons, as well as by competent international organizations after obtaining the consent of the Minister of Transport and Marine Economy”. However, according to art. 32a of the Maritime Act, if the scientific research conducted in Polish maritime areas concerns living resources the license is issued by the Minister of Agriculture. According to art. 4 of the Maritime Act Polish internal waters are⁹:

- the part of the Nowowarpieńskie Lake and the part of the Bay of Szczecin, together with the Świna and the Dziwna and the Bay of Kamień, situated east of the State frontier between Poland and Germany, and the River Odra between the Bay of Szczecin and the waters of the port of Szczecin;
- that part of the Bay of Gdańsk closed by a baseline running from a point having the coordinates 54° 37' 36" north geographic latitude and 18° 49' 18" east geographic longitude (on the Hel Sandbar – Mierzeja Helska) to a point having the coordinates 54° 22' 12" north geographic latitude and 19° 21' 00" east geographic longitude (on the Vistula Sandbar – Mierzeja Wiślańska);
- the part of the Vistula Bay (Zalew Wiślany) situated south-west of the State frontier between Poland and Russia on that Bay;
- harbor waters defined on the sea side by the line connecting the outermost permanent harbor works which form an integral part of the harbor system.

The said area of 1991 km²¹⁰ is subject to Polish sovereignty and the conduct of the scientific research there in is regulated exclusively by Polish national legislation. As the UNCLOS is lacking any regulations on conducting the scientific research in internal waters so the foreign researchers do not possess within this area any rights preserved by the acts of the international law.

The second component of the marine territory is the territorial sea which is the belt of waters extending to the breadth of 12 nautical miles (22 224 m) from the baseline. The surface of Polish territorial sea is 8682 km²¹¹. According to art. 245 of the UNCLOS “coastal State, in the exercise of its sovereignty, has the exclusive right to regulate, au-

⁹ According to art. 4 of the Maritime Act the boundary between the internal waters and the midland waters are determined in the Executive Order of the Minister of Agriculture of 26 July 2004 (Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi w sprawie określenia granic między wodami morskimi a wodami śródlądowymi do celów wykonywania rybołówstwa), DzU 2004, Nr 175, poz. 1824.

¹⁰ Polish Statistical Yearbook, (Rocznik Statystyczny RP), Warszawa 2004, s. 90.

¹¹ Ibidem.

thorize and conduct marine scientific research in their territorial sea, which may be conducted only with the express consent of and under the conditions set forth by the coastal State". Therefore, the foreign researchers must not conduct any research without the consent granted in the doubtless way and in accordance with Polish national procedures. Consequently, in the course of these procedures Poland is not bound with any international obligations and is not obliged to justify its refusal.

In the contrary to the internal waters, in the territorial sea the foreign vessels enjoy the right of innocent passage which can not be disturbed by the coastal state. However, according to art. 9 par. 10 of the Maritime Act, the conduct of unauthorized marine scientific research constitutes an activity depriving the passage of its innocent character¹². It should be emphasized that the prohibition of the research should not extend on these scientific measurements which are directly connected with the safety of navigation, as the coastal state is obliged to ensure safe navigation across its territorial sea according to art. 24 par. 2 of the UNCLOS.

The research in Polish exclusive economic zone

Polish exclusive economic zone is the area of 22682 km²¹³ situated outside the territorial sea and adjacent to it, comprising the waters, seabed and its subsoil. It does not constitute a part of the state's territory, but according to art. 56 of the UNCLOS Poland has within the zone "sovereign rights to explore, manage and exploit the natural resources, whether living or non-living, of the seabed and its subsoil, and the waters superjacent to them and the right to conserve those resources, as well as the sovereign rights with respect to others economic undertakings in the zone". The boundaries of the zone are determined in the international agreements with neighboring countries¹⁴. According to art. 56 par. 2 of the UNCLOS within this area Poland has also jurisdiction with regard to marine scientific research envisaged in Part XIII of the Convention.

The legal regime of conducting marine scientific research in the exclusive economic zone is significantly different from the regime in the marine territory of the coastal State. Art. 246 par. 1 of the UNCLOS entitles the coastal state to "regulate, authorize and conduct marine scientific research in their exclusive economic zone and on its continental shelf in accordance with relevant provisions of this Convention", while in paragraph 2 it is additionally stressed that "marine scientific research in the exclusive economic zone (...) shall be conducted with the consent of the coastal State". Poland however may not deny the consent only at its discretion, as art. 246 par. 3 of the UNCLOS states that: "coastal States shall, in normal circumstances, grant the consent for marine scientific research projects (...) in their exclusive economic zone and on their continental shelf to be carried out in accordance with this Convention, exclusively for peaceful purposes and in order to increase the scientific knowledge of the marine environment for the benefit of all mankind". Even though the term "normal circumstances"

¹² This article reflects the provisions of relevant art. 19 par. 2 (j) of the UNCLOS.

¹³ Polish Statistical Yearbook, (Rocznik Statystyczny RP), Warszawa 2004, s. 90.

¹⁴ So far, Poland has not settled only the boundary with Denmark in the vicinity of Bornholm.

has not been defined in the UNCLOS, it is emphasized in art. 246 par.4 of the UNCLOS that they “may exist in spite of the absence of diplomatic relations between the coastal State and the researching State”¹⁵. If the consent is denied the coastal state rests with burden of proof that the relevant circumstances are non-normal or abnormal. The rights of the foreign researchers in the exclusive economic zone are additionally strengthened by the duty of the coastal state to establish rules and procedures ensuring that consent will not be delayed or denied unreasonably¹⁶.

According to art. 29 par. 1 of the Maritime Act the Minister of Transport and Marine Economy is the appropriate administrative board entitled to grant the consent for the research project to be carried out in the exclusive economic zone (but when the project concerns living resources of the zone so art. 32a of the Maritime Act shall be applicable – as mentioned above). Obtaining the consent depends on submitting the application by the foreign researcher in the appropriate term which is defined in art. 248 of the UNCLOS as not later than six months before the expected starting date of the scientific project. However, the Maritime Act established in art. 29 par. 1 a solution more profitable for the foreign researchers, namely the term to submit the application is shortened to three months before the expected starting date of the research¹⁷. Concerning the content of the application art. 248 of the UNCLOS obliges the applier (the foreign state or competent international organization intending to undertake the research) to provide the coastal state with information on the following details:

- the nature and objectives of the project;
- the methods and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- the precise geographical areas in which the project is to be conducted;
- the expected date of the first appearance and final departure of research vessels, or deployment of the equipment and its removal, as appropriate;
- the name of the sponsoring institution, its director, person in charge of the project;
- the extent to which it is considered that the coastal state is able to participate or to be represented in the project.

Notwithstanding these provisions, art. 29 par. 1 of the Maritime Act requires merely that the application contains information on the intended research and the program therefore.

The consent for the scientific project in the exclusive economic zone may be withheld by the Minister of Transport and Marine Economy after obtaining the opinion of the Minister of Environmental Protection, Natural Resources and Forestry. According to art. 29 par. 2 of the Maritime Act the Minister is entitled to withhold the consent if the research project:

¹⁵ It is considered that some states could have financial difficulties to establish diplomatic relations with all members of the world community, which should not constitute an obstacle for conducting scientific research.

¹⁶ At. 246 par. 3 of the UNCLOS.

¹⁷ Initially, the Maritime Act had established the term of six months, but then it was shortened to three months by the Act amending the Maritime Act of 17 11 1994 (Ustawa z dnia 17 listopada 1994 r. o zmianie ustawy o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej), DzU 1995, nr 7, poz. 31.

- relates directly to the natural resources of the zone;
- involves drilling into the continental shelf, the use of the explosives or the introduction of harmful substances into the marine environment;
- involves construction and use of artificial islands, installations and structures.

The relevant art. 246 par. 5 of the UNCLOS states that the consent may be also withheld if the project “contains information communicated pursuant to art. 248 of the UNCLOS concerning 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”. Nevertheless, this situation has not been included in the Maritime Act.

According to art. 29 par. 2 of the Maritime Act the Minister after obtaining the opinion of the Minister of Environmental Protection, Natural Resources and Forestry may also refuse to issue a licence or revoke a licence if the scientific research threatens to pollute the environment¹⁸.

The right to conduct marine scientific research in the exclusive economic zone may be based not only at express consent but also at implied consent. According to art. 252 of the UNCLOS the scientific research project may be proceeded six months after the date upon which the information required pursuant to art. 248 of the UNCLOS was provided to the coastal state, unless within four months of the receipt of the communicate containing such information the coastal state has informed the state or organization conducting the research project that:

- it has withheld its consent under provisions of art. 246 par. 5 of the UNCLOS;
- the information given regarding to the nature or objectives of the project does not conform to the manifestly evident facts;
- it requires supplementary information relevant to conditions and information provided for under articles 248 and 249 of the UNCLOS;
- outstanding obligations exist with respect to a previous scientific research project carried out with regard to conditions established in art. 249 of the UNCLOS.

According to art. 253 par. 1 of the UNCLOS the coastal state has the right to require suspension of research activities in progress if they are not being conducted in accordance with the information communicated as provided upon art. 248 of the UNCLOS on which the consent was based; or if the entity conducting the research fails to comply with the provisions of art. 249 of the UNCLOS concerning the rights of the coastal state – which are implemented in art. 30 of the Maritime Act discussed above. Once the researching state or competent international organization has complied with the conditions required under articles 248 and 249 of the UNCLOS the order of suspension should be lifted by the coastal state (art. 253 par. 5 of the UNCLOS).

According to art. 253 par. 2 and par. 3 of the UNCLOS the coastal state may also require cessation of marine research activities if any of the situations contemplated in art. 253 par. 1 of the UNCLOS is not rectified within a reasonable period of time; or in case of any major change in research project or research activities accomplished in contrary to the information originally communicated.

¹⁸ Art. 29 par. 2 of the Maritime Act, this situation has not been included in the UNCLOS.

The Maritime Act does not clearly distinguish between cessation and suspension of the research. It is stated in art. 32 that the Minister of Transport and Marine Economy may require the cessation of any research in Polish maritime areas referred to in art. 28 and art. 29 par. 1 of the Maritime Act, or to revoke a license issued on the basis of art. 29 par. 1 if the research is carried out in a manner not consistent with the provisions of the Maritime Act, or with special provisions established by the license, or if the research has harmful consequences for the environment. It seems however that these provisions concern cessation of the research rather than suspension as the Maritime Act is lacking any regulations on the eventual lifting of the decision made up by the Minister.

The research carried out by Polish nationals

Poland has absolute freedom to regulate the marine scientific research conducted by its nationals in Polish maritime areas. With regard to Polish natural and juridical persons the Maritime Act does not set the requirement of obtaining the consent in order to conduct scientific research. According to art. 31 par. 1 of the Maritime Act they may engage in scientific research in Polish maritime areas without a license. However, the said persons must inform the Director of the competent Marine Office¹⁹ about the geographical areas and methods to be used for the research 14 days before the research is begun and after the research is concluded.

According to art. 31 par. 2 of the Maritime Act fisheries of the marine organisms within the frames of scientific research must be conducted in accordance with the requirements of the appropriate fishery regulations. The Act on Fishery²⁰ envisages in art. 22 that fishing the marine organisms in scientific aims is permissible after obtaining the licence from the competent District Inspector of Marine Fishery²¹. The application should be submitted not later than one month before the day in which the research is expected to start and should involve the precise description of:

- the intended scope, geographical area of the research and means to be used;
- the species of marine organisms to be hauled;
- the intended size of the hauls and the duration of the research cruise;
- the identity marks of the research vessel.

In the course of the research activities the license must be on board the research vessel²². The researcher is bound to provide the District Inspector of Marine Fishery with the final results and the conclusions of the research within three months after completing the project²³. The Inspector may revoke the license if the regulations on marine fishery have been strikingly violated. In the above case as well as if the researcher fails to provide the result and conclusions the Inspector may refuse to issue the license anew.

¹⁹ Urząd Morski.

²⁰ Ustawa o rybołówstwie z 10 lutego 2004 r., DzU Nr 62, poz. 574.

²¹ Okręgowy Inspektor Rybołówstwa.

²² Art. 24, par. 3 of the Act on Fishery.

²³ Art. 25 of the Act on Fishery.

It is noteworthy that art. 1 par. 2 p. 3 of the Act on Fishery states that its regulations shall be applied to all natural or juridical persons as well as to entities without juridical personality conducting fisheries in scientific aims. Thus, it remains unclear why art. 23 par. 2 lists the entities entitled to apply for a license, which only are: high schools, scientific institutes, after grammar schools and marine fishery schools with seats in Poland²⁴.

CONCLUSIONS

The analyze of the juridical regime established under the Maritime Act indicates that Polish national legislation concerning marine scientific research remains in compatibility with the regulation of the UNCLOS. Some particular solutions are even more profitable for the foreign researchers than the relevant international regulations. Perhaps implementation of certain UNCLOS regulations is incomplete (e.g. art. 246 par. 5 of UNCLOS and relevant art. 29 par. 2 of the Maritime Act or art. 248 of UNCLOS and art. 29 par. 1 of the Maritime Act) and it lies within the interest of Poland to make some amendments of the Maritime Act. However, generally the condition of Polish legislation should be estimated as satisfying.

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²⁴ „Z wnioskiem o wydanie pozwoleń [...] mogą wystąpić instytuty naukowo-badawcze, szkoły wyższe i wyższe szkoły zawodowe kształcące w zakresie rybołówstwa morskiego oraz szkoły ponadgimnazjalne o profilu rybołówstwo morskie, których siedziba znajduje się na terytorium RP”.

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ZASADY PRAWNE PROWADZENIA MORSKICH BADAŃ NAUKOWYCH W POLSKICH OBSZARACH MORSKICH

Streszczenie

Artykuł przedstawia zasady prowadzenia morskich badań naukowych w polskich obszarach morskich, zarówno przez podmioty zagraniczne, jak i polskie, na gruncie prawa międzynarodowego oraz odpowiednich polskich przepisów krajowych. Zgodnie z Konwencją Narodów Zjednoczonych o prawie morza z 1982 r. podmioty zagraniczne prowadzące morskie badania naukowe na polskim terytorium morskim muszą uzyskać wyraźną zgodę, wydaną przez właściwy organ polskiej administracji, natomiast w polskiej wyłącznej strefie ekonomicznej zgoda może mieć charakter wyraźny lub dorozumiany. Polska jest uprawniona do wstrzymania, cofnięcia lub do zawieszenia wydanej zgody jedynie w okolicznościach ściśle określonych w Konwencji. Uzyskanie zgody nie jest wymagane w stosunku do podmiotów o polskiej przynależności. Porównanie postanowień polskiego prawa wewnętrznego z odpowiednimi regulacjami Konwencji Narodów Zjednoczonych o prawie morza wykazuje wysoki stopień ich wzajemnej zgodności.