



MILITARY JUSTICE REVIEW GROUP

**Presented to the
Judicial Proceedings Panel Subcommittee
October 22, 2015**





Establishment of the MJRG

Background – A time of challenges

- Legislation approved 2013-2014 contained more than 50 military justice provisions; more changes pending this year.
- Manual for Courts-Martial (MCM) – more than 70 amendments, some of which are still pending review and approval.
- Congressionally mandated Response Systems Panel – extensive recommendations in 2014 addressing sexual assault and related issues.
- Ongoing review of sexual assault issues through 2017 by the congressionally mandated Judicial Proceedings Panel.
- Congressionally mandated further review of sexual assault matters by a different advisory committee.



Establishment of the MJRG

- **Transforming Challenges Into Opportunities**
- **Chairman of the Joint Chiefs of Staff (CJCS) memo to SecDef (Aug. 2013)**
 - Request for “a comprehensive and holistic review” of the Uniform Code of Military Justice (UCMJ) and the military justice system to ensure that the system “most effectively and efficiently does justice consistent with due process and good order and discipline.”



Establishment of the MJRG

- **SecDef Memo, October 18, 2013**
 - Directs a comprehensive review of the military justice system.
 - Responsibility vested in the DoD/GC
 - Requirement to utilize military justice experts from the five services.
- **SecDef benchmarks**
 - Legislative Report to DOD/GC– UCMJ: March 25, 2015
 - MCM Discussion Draft to DOD/GC: September 21, 2015
- **SecDef Requirement**
 - Specific legislative and MCM proposals



Organization of the MJRG

- **Judge advocates** and support staff from the five Services
- **Civilian attorneys** employed by DoD
- **Senior Advisors Designated by the General Counsel:**
Hon. Judge David Sentelle
Hon. Judith Miller
- **DOJ Advisor:**
Mr. Jonathan Wroblewski,
Criminal Division
Director Office of Policy and Legislation
- **USCAAF Advisor:**
John Sparks; Clark Price



DoD/GC Terms of Reference

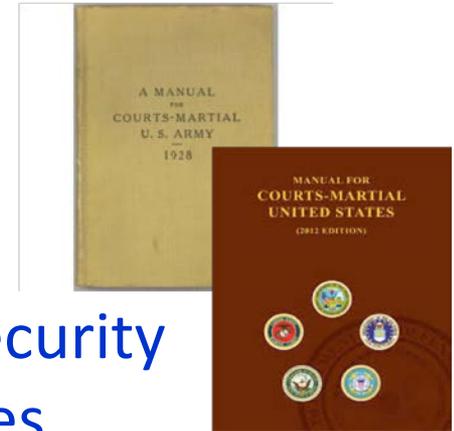
Five Principles

- Use the current UCMJ as a point of departure for a baseline reassessment.
- Consider incorporation of practices used in U.S. district courts.
- To the extent practicable, apply provisions uniformly across the Services.
- Consider recommendations issued by the Response Systems Panel and the Defense Legal Policy Board.
- Draw upon the experience of staff members, and consider a broad range of information.



MJRG Internal Guiding Principles

1. Military discipline and national security
2. Discipline - unique features of military law
3. Justice and discipline in a democratic society
4. Flexibility across a wide variety of national security environments and military personnel practices
5. Periodic evaluation and recalibration





MJRG FOCUS - Context

Differentiate this review from: Zero-based analysis; codification; restatement

Baseline criteria: Current UCMJ as a baseline.

- Unique military offenses
- Unique military procedures
- Unique military punishments

Impact of time-frame on: Surveys; hearings; data collection



MJRG FOCUS – Focal Points

- Opportunities for significant improvements in efficiency and effectiveness.
- System balance
- Issue-by-issue consideration of whether a legislative amendment would provide the best means of addressing a particular matter.



MJRG Outreach: Public input

- Opportunities for input:
 - MJRG website: <http://www.dod.mil/dodgc/mjrg.html>
 - E-mail: OSD.UCMJ@mail.mil
 - Letters: Military Justice Review Group Room 3B747 1600 Defense Pentagon Washington, DC 20301-1600
- Outreach
 - DoD/GC letters soliciting input
 - Federal Register notice
 - Military department outreach

52306 Federal Register / Vol. 79, No. 170 / Wednesday, September 3, 2014 / Notices

reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 59577, October 2, 2006). These certificates are valid for 2 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 184 Free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. October 14, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thunber Street, Warwick, RI 02886.
2. October 16, 2014, 9 a.m.–5 p.m., Holiday Inn, 9701 Overseas Highway, Key Largo, FL 33027.
3. November 19, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27546.
4. November 19, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 55 Town Center Boulevard, Palm Coast, FL 32164.
5. December 10, 2014, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70062.
6. December 17, 2014, 9 a.m.–5 p.m., Clarion Inn, 3845 Veterans Memorial Highway, Rocktonkoma, NY 11779.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 652-9159.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objective

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smallmouth snailfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Authority: 5 U.S.C. 5501 et seq.; Dated: August 28, 2014.

Emily H. Menasha,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1918c, 2014-2014-1918c-2-14-64 and 65-006, 006-1918c-2

DEPARTMENT OF DEFENSE
Office of the Secretary
Comprehensive Review of the Military Justice System: Revision

AGENCY: Department of Defense.
ACTION: Notice, revision.

SUMMARY: On May 19, 2014 (79 FR 23868–23889), the Department of Defense published a notice titled “Comprehensive Review of the Military Justice System.” Subsequent to the publication of that notice, the Department extended the deadline for the Military Justice Review Group (MJRG) reports recommending changes to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM). This notice is being published with revisions to the notice of May 19, 2014. The deadline for the MJRG report recommending changes to the UCMJ has been extended to March 25, 2015, and the deadline for the report recommending changes to the MCM has been extended to September 21, 2015.

ADDRESSES: You may forward submissions by either of the following methods:

- E-Mail: OSD.UCMJ@mail.mil.
- Mail: Military Justice Review, Room 3B747, 1600 Defense Pentagon, Washington, DC 20301-1600.

Web site: <http://www.dod.mil/dodgc/mjrg.html>.

FOR FURTHER INFORMATION CONTACT: Mr. William Sweeney, D/O Office of the General Counsel, 1600 Defense Pentagon, Washington DC 20301-1600; (703) 571-9457.

SUPPLEMENTARY INFORMATION: Submissions: The General Counsel invites members of the public to suggest areas for review by the MJRG concerning both substantive military law and military justice procedures, and to submit specific proposals to amend the UCMJ and the MCM. Please provide supporting rationale for any proposals. Submissions are requested as soon as possible to facilitate consideration within the timeframe established by the revised deadlines.





MJRG Outreach: Roundtable Discussions

- Criminal investigative organizations
- Staff Judge Advocates and Convening Authorities
- Trial counsel & appellate government counsel
- Defense counsel & appellate defense counsel
- Military judges
- Appellate judges
- Victim/ Witness assistance
- Criminal law instructors at Service schools
- Experience administering military justice programs
- Confinement facilities, clemency & parole
- Litigation experience with collateral review
- Personnel administration, review boards & admin law
- Special Victim Counsel



MJRG Outreach: General & Flag Officer Panel and Commander Panels

- General and Flag Officer Panel
 - Drawn from each Service with a three star from the Joint Staff
- Panels comprised of students and staff from the Marine Corps University, the Judge Advocate General's School and Legal Center, and National Defense University, including those with convening authority experience.



MJRG Outreach: Advance Consultation and Coordination

- Identify selected priority items involving key foundational legislative concepts for early interaction with the Judge Advocates General and other senior legal officials.
- Opportunities for early input and informal staff level discussions during development of proposals.



MJRG Internal Process: Team-Oriented Approach

- Structure
- Pretrial & Trial Process
- Sentencing and Post-Trial
- Punitive Articles

- Teams headed by a senior service designee w/
team members coming from the other
services



Process Internal Process: Issue Identification and Review

- **Issue Identification and Review**
 - Each phase of the military justice process, from initial reporting of misconduct through trial, the appellate process, and collateral review.
 - Ongoing developments: Including NDAA debates, RSP/JPP recommendations, Joint Service Committee/MCM changes.



MJRG Internal Process: Article-by-Article Issue Identification and Review

- For each UCMJ article and its implementing rules, the lead team reviews and identifies in writing:
 - Historical background.
 - Current practice.
 - Judicial decisions.
 - Ongoing legislative and regulatory developments.
 - Scholarly commentary.
 - Parallel practices in military and civilian law at the state, national, and international levels.
 - Internal and external proposals.
 - Other sources of law and policy.



MJRG Legislative Report Timeline

- **March 25, 2015** – Legislative Report to DoD/GC.
- **March - Sept. 2015:** Internal DoD Review and coordination; finalize DoD proposal; submission to OMB for interagency coordination
- **Oct./Nov. 2015 (est.)** Submission of legislative proposal to Congress, accompanied by MJRG Report.



MJRG Legislative Report - Contents

Overview

Executive Summary

- Establishing the MJRG and its Guiding Principles
 - Unique Military Offenses.
 - Unique Military Procedures.
 - Unique Military Punishments.
 - Partnership of Staff Judge Advocates and Convening Authorities.
 - Deployability.
 - Consideration of Criminal Law Practices in Civilian Courts.
 - Contemporary Context.
- Summary of Recommendations – Major Legislative Proposals



Legislative Report Contents (2)

A. Background

- Part 1 - Historical Perspective: Summary of Structural Changes in the Military Justice System
- Part 2. The Role of the Military Justice Review Group

B. Statutory Review and Recommendations

- Article-by-Article Index of UCMJ Recommendations
- Analysis of each separate provision of the UCMJ

C. Consolidated Legislative Proposal



Legislative Report – Contents (3)

Analysis of Each Provision of the UCMJ: Standard Format for each Article (or related group of articles)

1. Summary of Proposal.
2. Summary of the Current Statute.
3. Historical Background.
4. Contemporary Practice.
5. Relationship to Federal Civilian Practice.
6. Recommendation and Justification.
7. Relationship to Objectives and Related Provisions.
8. Legislative proposal.
9. Sectional analysis.



MJRG Manual for Courts-Martial Report

- **Ongoing:** Simultaneous attention to UCMJ and MCM during initial drafting process, internal DoD review, and interagency review.
- **Continuing flexibility** to address changes in the legislative landscape during and after submission of Legislative Report to Congress.
- **Timeline:**
 - Sept. 21, 2015 - Submission of the MCM Report to DoD/GC
 - Oct. 5, 2015 – MCM Report provided to the Services, beginning the process of interactive review of the MCM project with the Joint Services Committee on Military Justice.



Selected Topics - Pretrial

- Investigative information
- Pre-referral legal issues
- Efficient use of pretrial judicial resources
- Development of disposition information for the convening authority
- Disposition options – types of courts-martial.



Selected Topics - TRIAL

- Composition of court-martial panels.
 - Pool of potential members
 - Excess members
 - Petty Offenses
- Plea Agreements
- Sentencing
 - Information
 - Standards
 - Unitary/segmented sentencing
 - Forum



Selected Topics – **POST-TRIAL**

- Post-trial submissions
- Preparation of the record
- Authentication/certification
- Post-trial actions



Selected Topics – Appeal

- Avenues of appeal
 - Direct CCA Review
 - Art. 69 Review
 - Interlocutory Government Appeals
 - Sentence Appeals
- Filing requirements
- Scope
 - Issue Identification
 - Factual Sufficiency
 - Legal Error
 - Sentence Review
 - Supreme Court Review



Selected Topics – Offenses

- Relationship between Art. 134 and enumerated offenses
- Extraterritoriality
- LIOs
- Other punitive offenses



Selected Topics – Training, Transparency, & Periodic Review

- Training for commanders
- Public Access to trial level filings and decisions
- Relationship court-martial data to assessment of the court-martial process
- Periodic Reassessment



Questions?

<http://www.dod.mil/dodgc/mjrg.html>