

During the search for weapons, the official may seize any item that is immediately apparent as contraband or as evidence related to the offense serving as the basis for the stop. As a matter of safety, the official may, after conducting a lawful stop of a vehicle, order the driver and any passengers out of the car without any additional suspicion or justification.”

(i) A new Discussion is added following Mil. R. Evid. 314(g)(2):

“DISCUSSION

The scope of the search for weapons is limited to that which is necessary to protect the arresting official. The official may not search a vehicle for weapons if there is no possibility that the arrestee could reach into the searched area, for example, after the arrestee is handcuffed and removed from the vehicle. The scope of the search is broader for destructible evidence related to the offense for which the individual is being arrested. Unlike a search for weapons, the search for destructible offense-related evidence may take place after the arrestee is handcuffed and removed from a vehicle. If, however, the official cannot expect to find destructible offense-related evidence, this exception does not apply.”

(j) A new Discussion is added following Mil. R. Evid. 315(a):

“DISCUSSION

Although military personnel should adhere to procedural guidance regarding the conduct of searches, violation of such procedural guidance does not render evidence inadmissible unless the search is unlawful under these rules or the Constitution of the United States as applied to members of the armed forces. For example, if the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should notify him or her of the fact of authorization and the general substance of the authorization. Such notice may be made prior to or contemporaneously with the search. Property seized should be inventoried at the time of a seizure or as soon thereafter as practicable. A copy of the inventory should be given to a person from whose possession or premises the property was taken. Failure to provide notice, make an inventory, furnish a copy thereof, or otherwise comply with this guidance does not render a search or seizure unlawful within the meaning of Mil. R. Evid. 311.”

(k) A new Discussion is added following Mil. R. Evid. 315(c)(4):

“DISCUSSION

If nonmilitary property within a foreign country is owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense, a search should be conducted in coordination with an appropriate representative of the agency concerned, although failure to obtain such coordination would not render a search unlawful within the meaning of Mil. R. Evid. 311. If other nonmilitary property within a foreign country is to be searched, the search should be conducted in accordance with any relevant treaty or agreement or in coordination with an appropriate representative of the foreign country, although failure to obtain such coordination or noncompliance with a treaty or agreement would not render a search unlawful within the meaning of Mil. R. Evid. 311.”

(l) A new Discussion is added following Mil. R. Evid. 317(b):

“DISCUSSION

Pursuant to 18 U.S.C. 2516(1), the Attorney General, or any Assistant Attorney General specially designated by the Attorney General may authorize an application to a federal judge of competent jurisdiction for, and such judge may grant in conformity with 18 U.S.C. 2518, an order authorizing or approving the interception of wire or oral communications by the Department of Defense, the Department of Homeland Security, or any Military Department for purposes of obtaining evidence concerning the offenses enumerated in 18 U.S.C. 2516(1), to the extent such offenses are punishable under the Uniform Code of Military Justice.”

(m) A new Discussion is added following Mil. R. Evid. 412(c)(3):

“DISCUSSION

After hearing all evidence on the motion under subdivision (c) and before making a determination that the evidence is constitutionally required, the military judge should determine precisely what evidence is relevant and material and whether its probative value outweighs the danger of unfair prejudice. See *United States v. Ellerbrock*, 70 M.J. 314, 318 (C.A.A.F. 2011). The probative value of the evidence must be balanced against and outweigh the ordinary countervailing interests reviewed in making a determination as to whether evidence is constitutionally required. *United States v. Gaddis*, 70 M.J. 248, 255 (C.A.A.F. 2011). Such interests include, but are not limited to, harassment of a victim, prejudice to the integrity of the trial

process, confusion of the issues, the victim's safety, or interrogation of a victim that is only marginally relevant. The military judge retains wide latitude to impose reasonable limits on cross-examination regarding the bias of a victim or witness or motive to fabricate based on concerns about, among other things, harassment, prejudice, confusion of the issues, the safety of a victim or witness, or interrogation that is repetitive or only marginally relevant. See *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). The Constitution guarantees an opportunity for effective cross-examination, but not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). The military judge should carefully tailor an order that protects the right of the accused to present admissible evidence under this rule but does not allow presentation of evidence that is not admissible under subdivision (b).”

(n) A new Discussion is added following Mil. R. Evid. 505(k)(3):

“DISCUSSION

In addition to the sixth amendment right of an accused to a public trial, the Supreme Court has held that the press and general public have a constitutional right under the first amendment to access to criminal trials. *United States v. Hershey*, 20 M.J. 433 (C.M.A. 1985) citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). The test that must be met before closure of a criminal trial to the public is set out in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984), to wit: The party seeking closure must advance an overriding interest that is likely to be prejudiced; the closure must be narrowly tailored to protect that interest; the trial court must consider reasonable alternatives to closure; and it must make adequate findings supporting the closure to aid in review.”

Dated: February 28, 2012.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2012-OS-0026]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Defense Intelligence Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 13, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231-1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the individual listed in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 8, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

LDIA 06-0002

SYSTEM NAME:

Department of Defense Intelligence Information Systems Access, Authorization, and Control Records (April 11, 2007, 72 FR 18209).

REASON:

Records have been incorporated into LDIA 07-0003, entitled Department of Defense Intelligence Information System (DoDIIS) Customer Relationship

Management System. The records will assume the same retention schedule as listed in LDIA 07-0003.

[FR Doc. 2012-6003 Filed 3-13-12; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Installation of a Terminal Groin Structure at the Western End of South Beach, Bald Head Island, in Close Proximity to the Federal Wilmington Harbor Channel of the Cape Fear River (Brunswick County, NC)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from the Village of Bald Head Island (VBHI) to develop and implement a shoreline protection plan that includes the installation of a terminal groin structure on the east side of the Wilmington Harbor Baldhead Shoal Entrance Channel (a federally-maintained navigation channel of the Cape Fear River) at the "Point" of Bald Head Island. The structure will be designed to be strategically incorporated into the federal beach disposal operations associated with the Wilmington Harbor Sand Management Plan.

DATES: A public scoping meeting for the DEIS will be held at the ILA Hall, located at 211 West 10th Street in Southport (NC) on March 22, 2012 at 6 p.m. Written comments will be received until April 9, 2012.

ADDRESSES: Copies of comments and questions regarding scoping of the DEIS may be submitted to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number SAW-2012-00040, 69 Darlington Avenue, Wilmington, NC 28403.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and DEIS can be directed to Mr. David Timpy, Project Manager, Wilmington Regulatory Field Office, telephone: (910) 251-4634. Additional description of the

VBHI's proposal can be found at the following link, <http://www.saw.usace.army.mil/WETLANDS/Projects/index.html>, under the Village of Bald Head Island Terminal Groin Project.

SUPPLEMENTARY INFORMATION:

1. Project Description

The west end of South Beach has experienced both chronic mid-term (decadal) and accelerated short-term erosion losses (with direct impacts to beaches and dunes of this segment of shoreline). A nourishment project has been employed by the VBHI to mitigate the effects of these losses. In addition, several million cubic yards of sand from a Federal navigation project has been disposed on the beach since 1991. Despite this sand placement on the beach, a portion of South Beach continues to experience substantial erosion, potentially impacting public infrastructure and homes. It is the VBHI's desire to implement a long-term beach and dune stabilization strategy. The applicant contends that a necessary component to the success of this strategy is the installation of a terminal groin that would (1) reduce inlet-directed sand losses from beach fill construction projects; and (2) stabilize shoreline alignment along the westernmost segment of South Beach in such a manner that alongshore transport rates are reduced. The VBHI proposal calls for the construction of a single terminal groin designed to compliment future placement of beach fill at South Beach. The structure will serve as a "template" for fill material placed eastward of the proposed terminal groin. In that regard, the groin will be designed as a "leaky" structure (i.e. semi-permeable) so as to provide for some level of sand transport to West Beach (located northward of the proposed groin).

2. Issues

There are several potential environmental and public interest issues that will be addressed in the DEIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

a. Potential impacts to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat.

b. Potential impacts to threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts to adjacent shoreline changes on West Beach of Bald Head Island and adjacent shorelines.