



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO
OPNAVINST 3128.9E
N3/N5

SEP 27 2007

OPNAV INSTRUCTION 3128.9E

From: Chief of Naval Operations

Subj: DIPLOMATIC CLEARANCE FOR U.S. NAVY MARINE DATA COLLECTION
ACTIVITIES IN FOREIGN JURISDICTIONS

Ref: (a) OPNAVINST C3128.3T (NOTAL)
(b) OPNAVINST 3710.2E
(c) DOD Foreign Clearance Guide 4500.54-G (FCG)
(d) United Nations Convention on the Law of the Sea
(UNCLOS)
(e) DOD Maritime Claims Reference Manual 2005.1-M of
23 Jun 05 (NOTAL)

Encl: (1) Template Diplomatic Clearance Request Message to
Fleet Commanders for Military/Hydrographic Survey
(2) Template Diplomatic Clearance Request to U.S. Defense
Attaché Office for Military/Hydrographic Survey

1. Purpose. To provide guidance for determining requirements and procedures for requesting diplomatic clearance for marine data collection activities by Department of the Navy (DON) marine data collection assets in or over foreign territorial seas, archipelagic waters, straits for international navigation, exclusive economic zones (EEZs), or on the continental shelf within or beyond the EEZ.

2. Cancellation. OPNAVINST 3128.9D. This instruction has been completely revised and should be reviewed in its entirety.

3. Scope and Applicability

a. This instruction applies to sponsoring commands, offices, and commanders exercising control over operations of the type described in paragraph 1.

b. This instruction does not apply to:

(1) Intelligence operations.

SEP 27 2007

(2) Activities of civilian oceanographic institutions that are operating ships or aircraft owned by the U.S. Navy which are leased or bonded to academic institutions, such as the University-National Oceanographic Laboratory System (UNOLS) program assets.

(3) Operation of navigation, meteorological, telecommunication, and similar data gathering instruments used in the normal course of navigation. Use of such instruments employed in the normal course of navigation does not require coastal State consent seaward of the baseline (see paragraph 3d (5) for further guidance).

c. References (a) through (c) contain separate procedures for obtaining diplomatic clearance for ship port visits and aircraft flights to or within foreign countries. Those activities are separate from marine data collection and are neither addressed nor superseded by this instruction. Further, aircraft performing marine data collection may require normal aviation clearances, which shall be requested through proper channels.

d. Definitions

(1) Marine Data Collection. Marine data collection is a general term used when referring to all types of survey or marine scientific activity (e.g., military surveys, hydrographic surveys, and marine scientific research).

(2) Military Survey. Military survey refers to activities undertaken in territorial seas, archipelagic waters, straits for navigation, the EEZ, high seas, and on the continental shelf involving marine data collection (whether or not classified) for military purposes (e.g., not shared with the general public). Military surveys can include oceanographic, hydrographic, marine geological, geophysical, chemical, biological, acoustic, and related data.

(3) Hydrographic Survey. Hydrographic survey refers to marine data collection activities undertaken in the territorial seas, archipelagic waters, straits for navigation, the EEZ, high seas, and on the continental shelf for the production of nautical charts and similar products to support safety of navigation. Hydrographic surveys can include one or more of several classes of data, such as depth of water, configuration and nature of the natural bottom, direction and force of

SEP 27 2007

currents, heights and times of tides and water stages, and hazards to navigation.

(4) Marine Scientific Research (MSR). MSR refers to activities undertaken per Part XIII of reference (d) in territorial seas, archipelagic waters, straits for navigation, the EEZ, high seas, on the continental shelf, or in the Area. (Article 1 of reference (d) defines the Area as the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction). The purpose of MSR is to expand general scientific knowledge of the marine environment. MSR activities undertaken include physical and chemical oceanography, marine biology, fisheries research, scientific ocean drilling and coring, geological/geophysical studies, and other activities with a scientific purpose. Data collected as a result of MSR is made publicly available. MSR does not include prospecting and exploration of natural resources, hydrographic surveys, or military activities. This includes military surveys and environmental monitoring and assessment pursuant to section 4 of Part XII of reference (d), to include operational oceanography.

(5) Baselines

(a) Normal Baselines. The normal baseline for measuring the breadth of the territorial sea (and other maritime zones) is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

(b) Straight Baselines. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, reference (d) allows a State to claim straight baselines drawn per the established criteria from which the breadth of its maritime zones may be measured.

(6) Territorial Sea. A belt of sea adjacent to a coastal State measured seaward from baselines determined per reference (d) up to a maximum breadth of 12 nautical miles. The coastal State has sovereignty over the territorial sea, air space over the territorial sea, and seabed and subsoil under the territorial sea, subject to the right of ships of all States to engage in innocent passage.

(7) Exclusive Economic Zone (EEZ). An area beyond and adjacent to the territorial sea, extending up to 200 nautical miles from the baselines determined per reference (d). The coastal State has sovereign rights over resource-related matters

SEP 27 2007

and jurisdiction over artificial islands, installations, structures, MSR, and matters related to protection and preservation of the marine environment in the EEZ.

(8) Archipelagic State/Archipelagic Waters. An archipelagic State is constituted wholly of islands whose waters may be enclosed by straight archipelagic baselines, drawn per reference (d), that connect the outermost points of the archipelago's outer islands and drying reefs. Strict land-water ratio must be met for a State to legally draw straight archipelagic baselines.

(9) High Seas. The high seas include all parts of the sea that are not included in the EEZ, territorial sea, internal waters, or archipelagic waters of a State.

(10) Continental Shelf. The continental shelf of a coastal State consists of the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. Pursuant to Article 76 of reference (d), coastal States can claim that their continental shelf extends seaward of 200 nautical miles. The coastal State has sovereign rights over the natural resources and jurisdiction over MSR on the continental shelf. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or air space above those waters.

e. UNCLOS Background and Considerations

(1) Reference (d) established the right of States to claim a territorial sea to a maximum breadth of 12 nautical miles and an EEZ to a maximum of 200 nautical miles from legally established baselines. The U.S. recognizes these limits. The actual maritime claims of coastal States are provided in reference (e), which should be consulted in the planning of operations within these areas. However, the U.S. does not recognize those maritime claims that are not in conformity with customary international law as reflected in reference (d). Examples of claims that the U.S. does not recognize include excessive straight baseline claims, territorial sea claims in excess of 12 nautical miles, and other claims that unlawfully restrict freedom of navigation and overflight.

SEP 27 2007

(2) The distinctions between MSR, military surveys, and hydrographic surveys are important because of jurisdictional provisions in reference (d). Per reference (d), coastal States may regulate MSR in their territorial seas, archipelagic waters, bordering straits for international navigation, EEZ, and on their continental shelves. The U.S. Government, though, recognizes military survey and hydrographic survey as high seas freedoms distinct from MSR. Military surveys and hydrographic surveys are subject to coastal State consent in territorial seas, archipelagic waters, and straits used for international navigation. However, military surveys and hydrographic surveys are not subject to coastal State consent in foreign EEZs and on foreign continental shelves. The exception to this general rule is when military survey or hydrographic survey activity on a foreign continental shelf involves exploration or exploitation of living or non-living resources of the continental shelf. In such cases, coastal State consent is required.

(3) Currently, not all nations accept this interpretation distinguishing between MSR, military surveys, and hydrographic surveys. To promote universal acceptance of this interpretation, DON must consistently distinguish between military or hydrographic surveys and MSR. The guidelines listed in paragraph 4 below shall be followed.

4. Action

a. The following guidelines must be adhered to:

(1) For activities within foreign territorial seas, archipelagic waters, or straits used for international navigation, any marine data collection activities, whether MSR, military surveys, or hydrographic surveys, must be conducted with the express consent of the coastal State, obtained through proper notification and diplomatic clearance procedures.

(2) MSR activities within foreign EEZs or on the sea-bed or subsoil of the foreign continental shelves within or beyond the EEZ must be conducted with the express consent of the coastal State, obtained through proper notification and diplomatic clearance procedures.

(3) Notifications and requests for consent from the coastal State (e.g., diplomatic clearance) shall not be made for military surveys or hydrographic surveys conducted within foreign EEZs or on foreign continental shelves, unless the

SEP 27 2007

survey involves exploration or exploitation of living or non-living resources of the continental shelf.

(4) If a military survey or hydrographic survey is planned to occur in more than one maritime zone, diplomatic clearance shall be requested only for that portion of the military or hydrographic survey occurring inside the territorial sea, archipelagic waters, or straits used for international navigation.

(5) Messages requesting clearance for military survey or hydrographic survey shall not use the terms "scientist" or "researcher," but rather use "surveyor" or "hydrographer."

(6) Military survey data will be collected in support of Unified Command or Fleet operational requirements.

(7) Military survey efforts will be funded by Operational and Maintenance, Navy, or Research, Development, Test and Evaluation (6.4 or 6.5) funds.

(8) U.S. Navy marine data collection assets shall not combine MSR activity with military survey or hydrographic survey operations.

(9) Non-Navy charter vessels will not combine any form of MSR activity and military survey during the same cruise in the EEZ of a coastal State.

(10) Any non-Navy vessel conducting a military survey will have its Charter Party Agreement and Sailing Document state that the vessel is a "State Operated Vessel" conducting a military survey for the United States Navy.

(11) Vessels performing marine data collection for the Office of Naval Research (ONR), including, but not limited to, those vessels in the UNOLS fleet, are conducting MSR unless they are participating in naval operations or exercises.

(12) All military survey data will be delivered to the Naval Oceanographic Office as the official repository and for operational use. Release of the data outside of DOD and authorized DOD contractors will be performed by the Commander, Naval Meteorology and Oceanography Command.

(13) Data collected within foreign EEZs or on foreign continental shelves by military or hydrographic survey activity

SEP 27 2007

may not be published later as MSR. Release of the data outside of DOD and authorized DOD contractors will be performed by the Commander, Naval Meteorology and Oceanography Command.

b. Diplomatic Clearance Request Procedures

(1) Inquiries. Inquiries concerning the appropriate categorization of marine data collection activity and the need for diplomatic clearance should be addressed to Chief of Naval Operations (CNO) (N84) - Oceanographer of the Navy, who will coordinate, as necessary, with CNO (N3/N5L) and the Department of State. Inquires concerning the extent of coastal State claims should be addressed to CNO (N3/N5L) and Navy JAG (Code 10).

(2) Military and Hydrographic Survey. Diplomatic clearance shall be requested for military survey and hydrographic survey conducted within U.S.-recognized territorial seas, archipelagic waters of a foreign nation, and straits used for international navigation.

(a) Message Requests. The U.S. Navy organization exercising operational control over the survey activity shall use enclosure (1) to initiate the request for diplomatic clearance. Requests will be submitted via the operational chain of command to the cognizant naval component commander, who will obtain the diplomatic clearance from the appropriate United States Defense Attaché Office/American Embassy (USDAO/AMEMBASSY), using enclosure (2) as a template. Information addressees will include Oceanographer of the Navy, CNO (N3/N5), CNO (N3/N5L), COMNAVMETOCOM (01L), Department of State (Bureau of Political/Military Affairs), and applicable addressees as noted in reference (a). Diplomatic Clearance for marine data collection is handled differently than naval port visits and exercises in most countries. Care should be taken to ensure that the Ministry of Foreign Affairs [or appropriate level of government] grants the diplomatic clearance approval. Requests will be submitted separately from other Concept of Operations (CONOPS) or exercise request messages.

(b) Technical Specifications. In order to expedite review, the command exercising project control shall forward and/or make available amplifying technical specifications, which shall include a chart of suitable scale depicting the tracks and location of operations, to all appropriate addressees.

SEP 27 2007

(c) Lead Time Requirements. There are no lead time requirements for conducting military or hydrographic surveys.

(3) Marine Scientific Research (MSR)

(a) Message Requests. U.S. Navy-sponsored MSR is normally conducted by civilian research vessels under the sponsorship of the ONR. The Chief Scientist conducting the research will request diplomatic clearance using the guidelines provided by the Department of State (Bureau of Oceans and International Environmental and Scientific Affairs [OES]) at the following website (Authorization to Conduct MSR in Foreign EEZs): <http://www.state.gov/g/oes/ocns/rvc/3504.htm>.

(b) Lead Time Requirements. Department of State requires receipt of the application package for authorization to conduct MSR at least 27 weeks before the start of the cruise, due to UNCLOS lead-time requirements.

(c) Modification of Approved Operations. Any and all changes to the itinerary, scientific plan, and ship specifications must be reported to Department of State immediately.

c. Aircraft and Balloons. The requirements of paragraph 4b(1) apply for all airborne offshore marine data collection activities. Diplomatic clearance does not eliminate the need for fulfilling normal overflight requirements (e.g., Notices to Airmen (NOTAMs), flight plans, etc). References (b) and (c) contain information on flights to or within foreign countries.

d. Classification

(1) For projects involving classified information, the command or agency exercising project control must clear all releases of classified information with the appropriate original classification authority (OCA) and/or the Navy International Programs Office (IPO), as appropriate.

(2) Requests, information, reports, and messages on this subject should be appropriately classified, especially with regard to requesting clearance into politically sensitive areas. Information about prospective operations in areas of foreign jurisdiction should not be made public until after diplomatic clearance has been granted. Requests from the host country for cooperative or simultaneous public releases and such other specific limitations which accompany the clearance will normally

SEP 27 2007

be complied with. However, nothing in this paragraph is intended to alter, modify, or contravene existing directives concerning the public release of information.



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SEP 27 2007

**TEMPLATE DIPLOMATIC CLEARANCE REQUEST MESSAGE TO FLEET COMMANDERS FOR
MILITARY/HYDROGRAPHIC SURVEY**

FM NAVOCEANO STENNIS SPACE CENTER MS//N31//
 TO COGNIZANT OPERATIONAL COMMANDER//
 INFO SECDEF WASHINGTON DC//FMRA//
 SECSTATE WASHINGTON DC//PM-ISO//
 CNO WASHINGTON DC//N84/N3/N5L/N3/N5//
 COMFLTFORCOM NORFOLK VA//N3//N5//
 MSC CHAIN OF COMMAND//
 SHIP'S OPERATIONAL CHAIN OF COMMAND//
 COMNAVMETOCCOM STENNIS SPACE CENTER MS//01L//
 AMEMBASSY _____//
 USDAO _____//
 NGA HQ BETHESDA MD//ATCN/OGCC//
 NAVY JAG WASHINGTON DC//10//
 UNCLAS//N03120//***MSG IS CONFIDENTIAL IF YOU CONNECT SHIP, PORT, AND
 DATE***
 MSGID/GENADMIN/NAVOCEANO//
 SUBJ/DIPLOMATIC CLEARANCE REQUEST - REQUEST FOR (COUNTRY)
 MILITARY/HYDROGRAPHIC SURVEY//
 REF/A/DOC/CNO WASHINGTON DC/NEW DATE//
 AMPN/REF A IS OPNAVINST 3128.9E AND PROVIDES GUIDANCE FOR SUBMITTING
 DIPLOMATIC CLEARANCE REQUESTS.//
 POC/____//
 RMKS/1. IAW REF A, FOLLOWING INFO SUBMITTED FOR USE
 IN OBTAINING DIPLOMATIC CLEARANCE FOR USNS _____ (OR A/C), (WITH
 NAVOCEANO DETACHMENT ____ EMBARKED,) TO CONDUCT MILITARY/HYDROGRAPHIC
 SURVEYS WITHIN (COUNTRY) TERRITORIAL WATERS.

- A. NAME AND TYPE OF VESSEL:
- B. GROSS TONNAGE, LENGTH, DRAFT OF SHIP, DESCRIPTION OF OTHER
VESSEL:
- C. RADIO CALL SIGN AND EMERGENCY FREQUENCIES:
- D. OPERATING COMMAND, TACON AND OPCON AS APPLICABLE:
- E. PROJECT DESCRIPTION:
- F. DESCRIPTION OF DATA TO BE COLLECTED:
- G. EQUIPMENT TO BE USED:
- H. LOCATION OF PROJECT AREA, INCLUDING CPA TO FOREIGN TERRITORY:
- I. DATES OF SURVEY OPERATIONS:
- J. PROPOSED ITINERARY:
- K. SALUTING OR NON-SALUTING SHIP:
- L. COMMANDING OFFICER OR MASTER:
- M. NUMBER OF MILITARY AND CIVILIAN OFFICER AND CREW:
- N. NUMBER OF MEMBERS OF SURVEY PARTY:
- O. SENIOR SURVEYOR:
- P. FOREIGN PARTICIPATION AND SPECIAL REQUIREMENTS:
- Q. BENEFITS TO COASTAL STATE:

2. OTHER ADDITIONAL MESSAGES AND CORRESPONDENCE (CONOPS, TECHNICAL
 SPECIFICATIONS, ETC.) THAT WILL BE FORWARDED TO SUPPORT PROJECT:
 BT

Enclosure (1)

SEP 27 2007

**TEMPLATE DIPLOMATIC CLEARANCE REQUEST TO USDAO FOR
MILITARY/HYDROGRAPHIC SURVEY**

FM COGNIZANT FLEET COMMANDER//
TO USDAO _____//
INFO SECDEF WASHINGTON DC//FMRA//
SECSTATE WASHINGTON DC//PM-ISO//
CNO WASHINGTON DC//N84/N3/N5L/N3/N5//
COMFLTFORCOM NORFOLK VA//N3//N5
MSC CHAIN OF COMMAND//
SHIP'S OPERATIONAL CHAIN OF COMMAND//
COMNAVMETOCCOM STENNIS SPACE CENTER MS//01L//
NAVOCEANO STENNIS SPACE CENTER MS//N31//
AMEMBASSY _____//
USDAO _____//
NGA HQ BETHESDA MD//ATCN/OGCC//
NAVY JAG WASHINGTON DC//10//
OSD REPOPA//
UNCLAS//N03120//***MSG IS CONFIDENTIAL IF YOU CONNECT SHIP,
PORT, AND DATE***
MSGID/GENADMIN/_____//
SUBJ/DIPLOMATIC CLEARANCE REQUEST - REQUEST FOR (COUNTRY)
MILITARY/HYDROGRAPHIC SURVEY//
REF/A/DOC/CNO WASHINGTON DC/NEW DATE//
REF/B/MSG/NAVAL OCEANOGRAPHIC OFFICE/DTG//
AMPN/REF A IS OPNAVINST 3128.9E AND PROVIDES GUIDANCE FOR
SUBMITTING DIPLOMATIC CLEARANCE REQUESTS. REF B IS REQUEST FOR
SURVEY DIPLOMATIC CLEARANCE//
POC/_____//
RMKS/1. REQ OBTAIN DIPLOMATIC CLEARANCE FOR _____ AS DESCRIBED
REF B. PLEASE NOTE THAT THIS REQUEST IS FOR MILITARY
(HYDROGRAPHIC) SURVEY WITHIN TERRITORIAL WATERS AND MUST BE
CLEARED THROUGH THE MINISTRY OF FOREIGN AFFAIRS OR EQUIVALENT.
THIS SURVEY IS NOT, REPEAT NOT, MARINE SCIENTIFIC RESEARCH. DUE
TO LAW OF THE SEA CONCERNS, AVOIDANCE OF THE TERMS 'RESEARCH' OR
'SCIENCE' IS IMPERATIVE.
2. REQUEST INFORM ALL ADDEES WHEN CLEARANCE IS GRANTED. PLEASE
SEND COPY OF USG REQUEST FOR CLEARANCE AND HOST COUNTRY REPLY TO
NAVOCEANO AND COMNAVMETOCCOM ADDRESSES.

BT