OPNAV INSTRUCTION 3128.9G

From: Chief of Naval Operations

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

Ref: (a) DoD Foreign Clearance Guide  
(b) OPNAVINST C3128.3U (NOTAL)  
(c) OPNAVINST 3140.55C  
(f) DoDI S-2005.01  
(g) DoDI 4540.01

Encl:  (1) Template for Diplomatic Clearance Request Message to Fleet Commanders for Military and Hydrographic Survey  
(2) Template for Diplomatic Clearance Request to USDAO for Military and Hydrographic Survey

1. **Purpose.** To provide guidance for determining requirements and procedures for requesting diplomatic clearance for certain marine data collection activities by Department of the Navy (DON) marine data collection assets in or over foreign territorial seas, archipelagic waters, straits used for international navigation, exclusive economic zones (EEZ) or on the continental shelf within or beyond the EEZ. This instruction is being reissued with a new date, updated version and signature authority to meet Chief of Naval Operations’ age requirement for Office of the Chief of Naval Operations (OPNAV) instructions.

2. **Cancellation.** OPNAVINST 3128.9F.

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.

      (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 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 4e for further guidance).

c. References (a) and (b) 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 Those activities are separate from marine data collection and are neither addressed nor superseded by this instruction.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 must be requested through proper channels.

4. Definitions.

a. **Marine Data Collection.** Consistent with reference (c), 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 (MSR)).

b. **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 (not normally available to the general public or scientific community). Military surveys can include oceanographic, hydrographic, marine geological, geophysical, chemical, biological, acoustic and related data.

c. **Hydrographic Survey.** Hydrographic survey refers to marine data collection activities undertaken in the territorial seas, archipelagic waters, straits for navigation, 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 currents; heights and times of tides and water stages and hazards to navigation.

d. **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 of the deep sea bed. (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 include physical and chemical oceanography, marine biology, fisheries research, scientific ocean drilling and coring, geological and 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. Examples of activities excluded from MST include military surveys and environmental monitoring and assessment pursuant to section 4 of part XII of reference (d), to include operational oceanography.
e. **Baselines.** The territorial sea and other maritime zones are measured from baselines, when those baselines are drawn per reference (d). Reference (e) contains excessive baseline claims that are not recognized by the U.S. Government.

(1) **Normal Baselines.** The normal baseline from which maritime claims of a nation are measured is the low-water line along the coast as marked on the Nation’s official large-scale charts.

(2) **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, a state may claim straight baselines per reference (d) from which the breadth of its maritime zones may be measured.

f. **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 rules of international law, including the right of ships of all states to engage in innocent passage.

g. **EEZ.** An area beyond and adjacent to the territorial sea, extending up to 200 nautical miles from baselines drawn per reference (d). The coastal state has sovereign rights over certain resource-related matters and jurisdiction over artificial islands, installations, structures, MSR and matters related to protection and preservation of the marine environment in the EEZ as outlined in article 56 of reference (d).

h. **Archipelagic State and 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 outer points of an archipelago's outermost islands and drying reefs. A strict land to water ratio must be met for a state to legally draw straight archipelagic baselines. The waters inside the archipelagic baselines are archipelagic waters.

i. **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.

j. **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), a coastal state’s continental shelf may extend seaward of 200 nautical miles. The coastal state has sovereign rights for the purpose of exploring and exploiting natural resources of the shelf 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.

5. **Background and Considerations.**
a. 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 United States 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 United States does not recognize those maritime claims that do not conform to customary international law as reflected in reference (d). Examples of claims that the United States 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. Where baselines are in dispute or not recognized by the United States, any operations conducted without diplomatic clearance should comply with requirements of the Department of Defense (DoD) Freedom of Navigation Program outlined in reference (f).

b. 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 surveys and hydrographic surveys 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. Military surveys and hydrographic surveys are not subject to coastal state consent in foreign EEZs and on foreign continental shelves. However, all activities in a foreign EEZ or on the continental shelf involving exploration or exploitation of living or non-living resources require coastal state consent, per reference (d).

c. Currently, not all nations accept this interpretation distinguishing between MSR, military surveys and hydrographic surveys. To promote universal acceptance of this interpretation and reinforce customary international law, DON must consistently distinguish between military or hydrographic surveys and MSR. The guidelines listed in paragraph 6a must be followed.

6. Action.

a. Mandatory Guidelines.

(1) For activities within U.S.-recognized 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 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) Requests for consent from the coastal state (e.g., diplomatic clearance) must not be made for military surveys or hydrographic surveys conducted within foreign EEZs or on foreign
continental shelves, unless the activity affects the rights of the coastal state per reference ((d) e.g., if drilling into the seabed or exploration or exploitation of living or non-living resources is intended).

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

(5) Messages requesting clearance for military survey or hydrographic survey must 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 operation and maintenance, Navy; or research, development, test and evaluation 6a(4) or 6a(5) funds.

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

(9) 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 U.S. Navy.

(10) Navy chartered vessels will not combine any form of MSR activity with a military survey during the same cruise in the EEZ of a coastal state.

(11) Vessels performing marine data collection for the Office of Naval Research, including, but not limited to, those vessels in the University-National Oceanographic Laboratory System 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 (Data Ingest (N33)) as the official repository and for operational use. Release of the data outside of DoD and authorized DoD contractors will be authorized 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 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 OPNAV Director of Oceanography and Navigation division (OPNAV (N2/N6E)), who will coordinate, as necessary, with OPNAV Legal and Oceans Policy Advisor (OPNAV (N3/N5L)) and the Department of State. Inquiries concerning the extent of coastal state claims should be addressed to OPNAV (N3/N5L) and Navy Judge Advocate General (JAG) (Code 10 National Security Law).

(2) Military and Hydrographic Survey. Diplomatic clearance must 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 requesting diplomatic clearance for the survey activity must 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 diplomatic clearance from the appropriate United States defense attaché office (USDAO) or American Embassy (AMEMB), using enclosure (2) as a template. Information addressees will include OPNAV (N2/N6E), Deputy Chief of Naval Operations (Plans and Strategy) (CNO (N3/N5)), OPNAV (N3/N5L), Naval Meteorology and Oceanography Command (COMNAVMETOCOM (01LN00OGC and N5)), 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 from 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 or exercise request messages, unless the survey unit is an intrinsic component of an operation or exercise participant.

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

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

(3) MSR.

(a) Message Requests. U.S. Navy-sponsored MSR is normally conducted by civilian research vessels under the sponsorship of the Office of Naval Research. 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) at the following Web site (Research Application Tracking System): https://www.state.gov/marine-scientific-research-consent-overview/.

(b) Lead Time Requirements. Department of State requires receipt of the application package for authorization to conduct MSR at least 24 weeks before the start of the cruise.
(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 6b(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, flight plans, etc.). Reference (a) contains information on flights to or within foreign countries. Additional guidance is available in reference (g).

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

7. **Records Management.**

   a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned per the records disposition schedules located on the DON Assistant for Administration, Directives and Records Management Division portal page at https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx.

   b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact the local records manager or the OPNAV Records Management Program (DNS-16).

8. **Review and Effective Date.** Per OPNAVINST 5215.17A, OPNAV N3N5 will review this instruction annually around the anniversary of its issuance date to ensure applicability, currency and consistency with Federal, DoD, Secretary of the Navy and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction. This instruction will be in effect for 10 years, unless revised or cancelled in the interim and will be reissued by the 10-year anniversary date if it is still required, unless it meets one of the exceptions in OPNAVINST 5215.17A, paragraph 9. Otherwise, if the instruction is no longer required, it will be processed for
cancellation as soon as the need for cancellation is known following the guidance in OPNAV Manual 5215.1 of May 2016.

Releasability and distribution:
This instruction is cleared for public release and is available electronically only via DON Issuances Web site, https://www.secnav.navy.mil/doni/default.aspx.
TEMPLATE FOR DIPLOMATIC CLEARANCE REQUEST MESSAGE TO FLEET COMMANDERS FOR MILITARY AND 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//N2N6E/N3/N5L/N3/N5// COMUSFLTFORCOM NORFOLK VA//N3//N5//
MSC CHAIN OF COMMAND//
SHIP'S OPERATIONAL CHAIN OF COMMAND//
COMNAVMETOCOM STENNIS SPACE CENTER MS//N000GC//N5///
AMEMB____// USDAO____//
NGA NES WASHINGTON DC//ATCN/OGCC//
NAVY JAG WASHINGTON DC//10//
UNCLAS//N03120/****MSG IS CONFIDENTIAL IF YOU CONNECT SHIP, PORT AND DATE***
MSGID/GENADMIN/NAVOCANO//
SUBJ/DIPLOMATIC CLEARANCE REQUEST - REQUEST FOR (COUNTRY) MILITARY/HYDROGRAPHIC SURVEY//
REF/A/DOC/CNO WASHINGTON DC/NEW DATE//
AMPN/REF A IS OPNAVINST 3128.9G AND PROVIDES GUIDANCE FOR SUBMITTING DIPLOMATIC CLEARANCE REQUESTS.//
POC/__//
RMKS/1. Per reference (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 (concept of operations, technical specifications, etc.) that will be forwarded to support project:
BT
TEMPLATE DIPLOMATIC CLEARANCE REQUEST TO USDAO FOR MILITARY AND HYDROGRAPHIC SURVEY

FM COGNIZANT FLEET COMMANDER// TO USDAO //
INFO SECDEF WASHINGTON DC//FMRA// SECSTATE WASHINGTON DC//PM-ISO//
CNO WASHINGTON DC//N2N6E/N3/N5L/N3/N5// COMUSFLTFORCOM NORFOLK
VA//N3//N5
MSC CHAIN OF COMMAND//
SHIP'S OPERATIONAL CHAIN OF COMMAND//
COMNAVMETOCOM STENNIS SPACE CENTER MS//N00OGC//N5///
NAVOCEANO STENNIS SPACE CENTER MS//N31//
AMEMB____// USDAO ___//
NGA NES WASHINGTON DC//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 3128.9G AND PROVIDES GUIDANCE FOR SUBMITTING DIPLOMATIC CLEARANCE REQUESTS. REF B IS REQUEST FOR SURVEY DIPLOMATIC CLEARANCE//
POC/___//
RMKS/

1. Request obtain diplomatic clearance for__as described reference (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 addressees when clearance is granted. Please send copy of USG request for clearance and host country reply to NAVOCEANO and COMNAVMETOCOM addresses.

BT

Enclosure (2)