

cordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America [43 U.S.C. 1331 note], Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America [16 U.S.C. 1453 note], and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States [43 U.S.C. 1331 note].

SEC. 8. *General.* (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.

(b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.

(c) This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

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§ 1432. Definitions

As used in this chapter, the term—

(1) “draft management plan” means the plan described in section 1434(a)(1)(C)(v)¹ of this title;

(2) “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) “marine environment” means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;

(4) “Secretary” means the Secretary of Commerce;

(5) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;

(6) “damages” includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

(B) the cost of damage assessments under section 1443(b)(2) of this title;

(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;

(D) the cost of curation and conservation of archeological, historical, and cultural sanctuary resources; and

(E) the cost of enforcement actions undertaken by the Secretary in response to the

destruction or loss of, or injury to, a sanctuary resource;

(7) “response costs” means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury, including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 1443 of this title;

(8) “sanctuary resource” means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary; and

(9) “exclusive economic zone” means the exclusive economic zone as defined in the Magnuson-Stevens Act; and

(10) “System” means the National Marine Sanctuary System established by section 1431 of this title.

(Pub. L. 92-532, title III, §302, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 96-332, §2, Aug. 29, 1980, 94 Stat. 1057; Pub. L. 97-375, title II, §202(a), Dec. 21, 1982, 96 Stat. 1822; Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2297; Pub. L. 100-627, title II, §204(b), Nov. 7, 1988, 102 Stat. 3217; Pub. L. 102-587, title II, §2102, Nov. 4, 1992, 106 Stat. 5040; Pub. L. 104-283, §9(b), Oct. 11, 1996, 110 Stat. 3367; Pub. L. 106-513, §§4, 19(b)(1), (2), Nov. 13, 2000, 114 Stat. 2382, 2392, 2393.)

REFERENCES IN TEXT

Section 1434(a)(1)(C) of this title, referred to in par. (1), was amended generally by Pub. L. 106-513, §6(a), Nov. 13, 2000, 114 Stat. 2383, and, as so amended, no longer contains a cl. (v).

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in par. (2), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2000—Par. (2). Pub. L. 106-513, §19(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “‘Magnuson Act’ means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)”.

Par. (6)(D), (E). Pub. L. 106-513, §4(a), added subpars. (D) and (E).

Par. (7). Pub. L. 106-513, §4(b), inserted “, including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 1443 of this title” after “loss, or injury”.

Par. (8). Pub. L. 106-513, §4(c), substituted “educational, cultural, archeological, scientific,” for “research, educational.”

Par. (9). Pub. L. 106-513, §19(b)(2), substituted “Magnuson-Stevens Act” for “Magnuson Fishery Conservation and Management Act”.

Par. (10). Pub. L. 106-513, §4(d), added par. (10).

1996—Par. (6)(C). Pub. L. 104-283, §9(b)(1), which directed substitution of a semicolon for “, and” at end, was executed by substituting a semicolon for the comma at end to reflect the probable intent of Congress.

Par. (7). Pub. L. 104-283, §9(b)(2), struck out “and” after “injury”.

1992—Par. (1). Pub. L. 102-587, §2102(e)(1), substituted “1434(a)(1)(C)(v)” for “1434(a)(1)(E)”.

¹ See References in Text note below.

Par. (3). Pub. L. 102-587, §2102(a), inserted “including the exclusive economic zone,” after “jurisdiction.”

Par. (5). Pub. L. 102-587, §2102(e)(2), struck out “and” at end.

Par. (6)(C). Pub. L. 102-587, §2102(b), added subpar. (C).

Par. (7). Pub. L. 102-587, §2102(c), inserted “or authorized” after “taken”.

Par. (9). Pub. L. 102-587, §2102(d), added par. (9).

1988—Pars. (6) to (8). Pub. L. 100-627 added pars. (6) to (8).

1984—Pub. L. 98-498 amended section generally, substituting provisions which set forth definitions for provisions which related to the designation of sanctuaries. See section 1433 of this title.

1982—Subsec. (d). Pub. L. 97-375 substituted provision that Secretary submit a biennial report on or before March 1 of every other year beginning in 1984 for provision that Secretary submit an annual report on or before November 1 of each year, and substituted reference to previous two fiscal years for reference to previous fiscal year.

1980—Subsec. (b). Pub. L. 96-332, §2(1), designated existing provisions as par. (1), struck out provision that a designation under this section would become effective sixty days after it was published unless the Governor of any State involved, before the expiration of the sixty-day period, certified to Secretary that the designation, or a specified portion thereof, was unacceptable to his State, in which case the designated sanctuary would not include the area certified as unacceptable until such time as the Governor withdrew his certification of unacceptability, and added par. (2).

Subsec. (f). Pub. L. 96-332, §2(2), designated existing provisions as par. (2), added pars. (1), (3), and (4), and, in par. (2) as so designated, substituted “The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide” for “After a marine sanctuary has been designated under this section, the Secretary, after consultation with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this chapter and can be carried out within the regulations promulgated under this section”.

Subsec. (h). Pub. L. 96-332, §2(3), added subsec. (h).

REGULATIONS

Pub. L. 100-627, title II, §210, Nov. 7, 1988, 102 Stat. 3223, provided that: “Not later than one year after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Commerce—

“(1) shall propose regulations implementing the amendments made by this title [enacting sections 1440 to 1445 of this title, amending sections 1432, 1434, and 1437 of this title, and repealing section 1438 of this title]; and

“(2) shall issue final regulations implementing the amendments made by the Marine Sanctuaries Amendments of 1984 [enacting sections 1435 to 1439 of this title and amending sections 1431 to 1434 of this title].”

ADDITIONAL DEFINITIONS

Pub. L. 92-532, §3, Oct. 23, 1972, 86 Stat. 1052, which is classified to section 1402 of Title 33, Navigation and Navigable Waters, defines for purposes of this chapter the terms “Administrator”, “Ocean waters”, “Material”, “United States”, “Person”, “Dumping”, “District Court of the United States”, “Dredged material”, “High-level radioactive waste”, and “Transport” or “Transportation”.

§ 1433. Sanctuary designation standards

(a) Standards

The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that—

(1) the designation will fulfill the purposes and policies of this chapter;

(2) the area is of special national significance due to—

(A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;

(B) the communities of living marine resources it harbors; or

(C) its resource or human-use values;

(3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and

(5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) Factors and consultations required in making determinations and findings

(1) Factors

For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a) of this section, the Secretary shall consider—

(A) the area’s natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

(B) the area’s historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area’s resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the ben-