

**Department of the Navy, DoD**

**§ 763.3**

\_\_\_\_\_ granted by (issuing activity) on \_\_\_\_\_ is hereby revoked effective this date.

Sincerely yours,

[41 FR 28959, July 14, 1976]

**Subpart D—Additional Instructions**

**§ 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.**

(a) By virtue of the authority vested in the President by section 44 of the United States Criminal Code, as amended and reenacted in 18 U.S.C. 2152, the President has prescribed the following additional regulations in Executive Order 9275 of November 23, 1942 (7 FR 9767; 1943 Cum. Supp. p. 1227) to govern persons and vessels within the limits of defensive sea areas theretofore or thereafter established.

(1) No person shall have in his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, negative or positive, can be made, except in the performance of official duty or employment in connection with the national defense, or when authorized pursuant to the provisions of the Act approved June 25, 1942 (Pub. L. 627, 77th Congress), as amended (50 U.S.C. App. 781-785), and the regulations promulgated thereunder (7 FR 7307; 32 CFR 765.19(b)).

(2) It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any person, prior to the time any vessel enters any defensive sea area or upon the boarding by any person of any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(3) There shall be prominently displayed on board all vessels, except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the

regulations prescribed in Executive Order 9275.

(4) Any person violating section 1 of Executive Order 9275 (restated in paragraph (a)(1) of this section) shall be liable to prosecution as provided in section 44 of the Criminal Code as amended and reenacted in 18 U.S.C. 2152.

(b) The regulations stated in paragraph (a) of this section are not a limitation on prosecution under any other statute that may have been violated by acts or omissions prohibited by Executive Order 9275.

**PART 762 [RESERVED]**

**PART 763—RULES GOVERNING PUBLIC ACCESS**

**Subpart A—Entry Regulations for Kaho’olawe Island, Hawaii**

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AUTHORITY: 50 U.S.C. 797; DOD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714; E.O. No. 10436, 3 CFR 1949-1953 Comp. p. 930, (1958).

SOURCE: 47 FR 27553, June 25, 1982, unless otherwise noted.

**Subpart A—Entry Regulations for Kaho’olawe Island, Hawaii**

**§ 763.1 Purpose.**

The purpose of this subpart is to promulgate regulations for entry to Kaho’olawe Island, Hawaii, and its adjacent waters.

**§ 763.2 Definition.**

For the purpose of this subpart, Kaho’olawe Island includes that portion reserved for naval purposes by Executive Order No. 10436 of February 20, 1953.

**§ 763.3 Background.**

(a) Kaho’olawe Island is used by the armed forces of the United States as a training area including bombing and gunnery training ranges under authority granted by Executive Order No.

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10436. Training operations frequently involve the use of live ordnance, creating an obvious danger to persons on or near the island. Moreover, a large amount of unexploded ordnance is present on Kaho'olawe Island and in adjacent waters.

(b) Individuals who enter the island of Kaho'olawe without authority expose themselves to extremely hazardous conditions. In addition, the presence of unauthorized persons on Kaho'olawe Island or in adjacent waters is likely to interfere with the use of the island for military training. Accordingly, it is necessary to prohibit entry to Kaho'olawe Island except under the controlled circumstances set forth in this subpart.

#### § 763.4 Entry restrictions.

(a) Entry by any person upon Kaho'olawe Island for any purpose is prohibited without advance authorization from Commander Naval Base. This prohibition applies to all areas of Kaho'olawe Island reserved for naval purposes by Executive Order 10436.

(b) Entry by any person into the restricted waters adjacent to Kaho'olawe Island for any purpose is prohibited without advance authorization from Commander Naval Base. This prohibition applies to all waters described in 33 CFR 204.223(4).

[47 FR 27553, June 25, 1982, as amended at 52 FR 20074, May 29, 1987]

#### § 763.5 Entry procedures.

(a) It is the policy of the Commander Naval Base to authorize, in accordance with the spirit of the American Indian Religious Freedom Act (1978), reasonable access to Kaho'olawe Island during periods when it is not used for military training. However, because there are bombs and other explosives on and under the surface and in the waters of the island, and because there are significant archaeological resources thereon (in 1981, the island was placed on the National Register of Historical Places as an Archaeological District), Navy representatives accompany each island visitation to safeguard both the visitor(s) and the island's archaeological resources. In this regard, in order to ensure the safety of visitors to the island and its archaeological re-

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sources, persons and organizations wishing access to Kaho'olawe Island must comply with the following appropriate procedures: Civilians (except authorized U.S. and State representatives) must:

(1) Request, in writing, access authorization from Commander Naval Base (Code 01K), Pearl Harbor, Hawaii 96860, at least 15 days prior to the access requested, providing therein confirmed access plans (including the exact number of visitors, time, and location of access, designation of person in charge, and any other pertinent information); and

(2) Submit to Commander Naval Base (at the aforementioned address) properly endorsed Standard Liability Release Form (obtainable from Commander Naval Base), for each access participant, at least five (5) days prior to the requested access.

(b) In evaluating each request, the factors just enumerated will be weighed against training commitments, safety requirements, special projects, and the amount and cost of military supervision necessitated by a granting of the request. Requests for entry will be considered on an individual basis. If a request is granted, the permission to enter Kaho'olawe Island authorizes one visit only, and shall not be construed as authorization for more than one entry unless the authorization itself specifically states otherwise. Moreover, entry pursuant to advance consent, which is not in accordance with the terms and conditions permitted by Commander Naval Base, shall be deemed a violation of this subpart.

(c) For safety reasons, it is not Commander Naval Base policy to permit children below the age of 15 access to Kaho'olawe Island.

(d) The following safety regulations are applicable to visitors to Kaho'olawe Island:

(1) All visitors to the island are required to execute and submit a waiver of government liability form to a designated Navy representative prior to arrival at the island.

(2) Visitors to the island will be escorted by Navy designated Explosive Ordnance Disposal (EOD) technicians to ensure that they stay on cleared

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paths, avoid impact areas, and do not touch high explosives. For visitor safety, the directions of the military escorts must be followed.

(3) No person will interfere with any EOD escort in the performance of his duties.

(4) Any actual or suspected ordnance found by a visitor shall be reported to the Special Assistant for Kaho'olawe as soon as possible. If he is not in the vicinity, a description and location of the ordnance should be provided to the nearest EOD technician. Everyone, other than EOD personnel, shall remain clear of any ordnance found.

(5) Only the qualified EOD technicians shall touch, examine, remove, attempt to remove, handle either directly or indirectly, or detonate any ordnance, whether found on the surface, beneath the surface or in the waters surrounding Kaho'olawe.

(6) Any proposed hike and procession route shall be provided to the Special Assistant for Kaho'olawe (or his designated representative) for approval and escort coordination at least twenty-four hours in advance of the planned event. Deviation from approved routes will not be allowed. Proposed campsites for overnight hikes shall be similarly provided to, and approved by, the Special Assistant for Kaho'olawe or his designated representative.

(7) No person shall move about the island after sunset unless a bonafide emergency situation arises. The senior Naval officer present shall be immediately notified in case of such emergency.

(8) No person shall commit any offense proscribed by either Federal law

or the State of Hawaii Penal Code, as incorporated under the Federal Assimilative Crimes Act, while on the island of Kaho'olawe. Any individual who violates any provisions of these penal codes may be prosecuted by the Federal Government and/or barred from any future access to Kaho'olawe.

(9) No person shall deface, alter, remove, spoil, or destroy any archeological object, feature, or site on the island.

(10) Children shall remain with their parents at all times while on the island.

(11) Visitors are responsible for removing their own trash from the island.

(12) Individuals failing to abide by these safety guidelines will be precluded from future visitations.

[47 FR 27553, June 25, 1982, as amended at 52 FR 20074, May 29, 1987; 52 FR 45455, Nov. 30, 1987]

**§ 763.6 Violations.**

(a) Any person who violates this subpart is subject to prosecution under 18 U.S.C. 1382, which provides in relevant part:

Whoever \* \* \* goes upon any \* \* \* naval \* \* \* reservation \* \* \* for any purpose prohibited by law or lawful regulation \* \* \* shall be fined not more than \$500 or imprisoned not more than six months, or both.

(b) Additionally, persons who violate this Subpart are subject to prosecution under the Internal Security Act of 1950 (50 U.S.C. 797), violations of which may result in a maximum penalty of imprisonment for one year, or a fine of \$5,000 or both.