

(d) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.3 Authority.

(a) *Naval Defensive Sea Areas and Naval Airspace Reservations.* By Executive orders, as amended, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, ships, and aircraft into the areas so described. (See § 761.4(b) for delineation of areas where entry controls are suspended.)

(1) *Atlantic areas.* Guantanamo Bay Naval Defensive Sea Area; Guantanamo Bay Naval Airspace Reservation: Executive Order 8749 of May 1, 1941 (6 FR 2252; 3 CFR, 1943 Cum. Supp., p. 931).

(2) *Pacific areas.* (i) Honolulu Defensive Sea Area: Executive Order 8987 of December 20, 1941 (6 FR 6675; 3 CFR, 1943 Cum. Supp., p. 1048).

(ii) Kaneohe Bay Naval Defensive Sea Area; Kaneohe Bay Naval Airspace Reservation: Executive Order 8681 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 893).

(iii) Pearl Harbor Defensive Sea Area: Executive Order 8143 of May 26, 1939 (4 FR 1791; 3 CFR, 1943 Cum. Supp., p. 504).

(iv) Johnston Island Naval Defensive Sea Area; Johnston Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(v) Kingman Reef Naval Defensive Sea Area; Kingman Reef Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2,

1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vi) Midway Island Naval Defensive Sea Area; Midway Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vii) Wake Island Naval Defensive Sea Area; Wake Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(viii) Kiska Island Naval Defensive Sea Area; Kiska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(ix) Kodiak Naval Defensive Sea Area: Executive Order 8717 of March 22, 1941 (6 FR 1621; 3 CFR, 1943 Cum. Supp., p. 915). Kodiak Naval Airspace Reservation: Executive Order 8597 of November 18, 1940 (5 FR 4559; 3 CFR, 1943 Cum. Supp., p. 837) as amended by Executive Order 9720 of May 8, 1946 (11 FR 5105; 3 CFR, 1943-1948 Comp., p. 527).

(x) Unalaska Island Naval Defensive Sea Area, Unalaska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919). See § 761.4(d) for delineation of areas where entry controls are suspended.

(b) *Administrative areas.* By Executive orders, as amended, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named areas including their appurtenant reefs and territorial waters:

(1) Johnston Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(2) Kingman Reef—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(3) Midway Island—Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(4) Sand Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(c) *Trust Territory of the Pacific Islands.* The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. Under Executive Order 11021 of May 7, 1962 (27 FR 4409; 3 CFR, 1959-1963 Comp., p. 600), the Secretary of the Interior is charged with responsibility for administration of the civil government of the Trust Territory of the Pacific Islands. Under July 1, 1963 amendment two agreements effective July 1, 1951 and July 1, 1962 between the Department of the Navy and the Department of the Interior concerning responsibility for administration of the Government of the Trust Territory, the entry of individuals, ships and aircraft into the Trust Territory (other than areas under the control of the Department of the Army (Kwajalein Atoll) and of the Defense Nuclear Agency (Eniwetok Atoll) see §761.4) is controlled by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

(1) Entry of U.S. citizens and nationals and citizens of the Trust Territory, into areas of the Trust Territory other than those areas under control of the Department of the Army and the Defense Nuclear Agency as outlined above, shall be controlled by the High Commissioner.

(2) All other persons: Applications for entry into the Trust Territory except for those areas under control of the Department of the Army or of the Defense Nuclear Agency, of all persons who are not U.S. citizens, U.S. nationals, or who are not citizens of the Trust Terri-

tory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided*, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases (with the exception of alien individuals who possess a valid U.S. visa and seek admission to the Trust Territory for a period of 30 days or less for the purpose of tourism) information on the applicants for its consideration and comment, granting thereby the Department of the Navy the right to object to the issuance of an authorization.

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory into areas of the Trust Territory, excepting those areas where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

(ii) Applications for entry into the Trust Territory, except for those areas under military control, of ships and aircraft not documented under the laws of the United States or the laws of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided*, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases with information on the applicants for its consideration and comment, granting thereby the right of the Department of the Navy to object to the issuance of an authorization.

(d) [Reserved]

(e) *Exercise of authority.* The authority of the Secretary of the Navy to control entry of ships, planes, and persons into the areas listed is exercised through the Chief of Naval Operations and certain of his subordinates as prescribed in this part.

(f) *Penalties.* Penalties are provided by law: (1) For violations of orders or regulations governing persons or ships within the limits of defensive sea areas

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(62 Stat. 799; 18 U.S.C. 2152); (2) for entering military, naval or Coast Guard property for prohibited purposes or after removal or exclusion therefrom by proper authority (62 Stat. 765; 18 U.S.C. 1382); (3) for violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any department or agency of which said department or agency consists, or any officer or employee of said department or agency (sec. 21 of the Internal Security Act of 1950 (50 U.S.C. 797) and Department of Defense Directive 5200.8 of 20 August 1954 (19 FR 5446)); and (4) for knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. 1001).

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970; 36 FR 21889, Nov. 17, 1971; 41 FR 28957, July 14, 1976]

§ 761.4 Special provisions.

(a) Entry into islands in the Kwajalein Atoll under military jurisdiction is controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army Safeguard System Command, ATTN: SSC-R, P.O. Box 1500, Huntsville, AL 35807.

(b) Entry into Eniwetok Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115.

(c) Entry into Johnston Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Johnston Atoll should be directed to: Commander, Johnston Atoll (FCDNA), APO San Francisco, CA 96305.

(d) *Suspension of restrictions.* Restrictions imposed under the authority of the above cited Executive Orders on

entry into the following Naval Defensive Sea Areas and Naval Airspace Reservations and Administrative Areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require.

(1) All Naval Airspace Reservations, except the Guantanamo Bay Naval Airspace Reservation

(2) Honolulu Defensive Sea Area.

(3) Kiska Island Naval Defensive Sea Area.

(4) Kodiak Island Naval Defensive Sea Area.

(5) Unalaska Island Naval Defensive Sea Area.

(6) Wake Island Naval Defensive Sea Area except for entry of foreign flag ships and foreign nationals.

(7) The portion of Kaneohe Defensive Sea Area lying beyond a 500 yard buffer zone around the perimeter of the Kaneohe Marine Corps Air Station (Mokapu Peninsula) and eastward therefrom to Kapoho Point, Oahu.

(e) Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area, or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

[41 FR 28957, July 14, 1976]

§ 761.5 Definitions.

(a) *Defense area.* A naval defensive sea area, naval airspace reservation, or naval administrative area established by Executive order of the President.

(b) *Department of Defense.* The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) *Entry authorization.* A document which authorizes a ship, aircraft, or person to enter a defense area.

(d) *Entry Control Commander.* A commander empowered to issue entry authorizations for one or more defense areas (see § 761.9).

(e) *Excluded person.* A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for