

U.S. Department of
Homeland Security

United States
Coast Guard



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United States Coast Guard

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COMDTINST 16004.4A
19 JUN 2018

COMMANDANT INSTRUCTION 16004.4A

Subj: COAST GUARD OPERATIONS AND FEDERAL MARINE PROTECTED AREA PROGRAMS

- Ref:
- (a) Coast Guard Publication 1, February 2014
 - (b) Executive Order 13158, Marine Protected Areas, 26 May 2000
 - (c) Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes, 19 July 2010
 - (d) National Marine Sanctuaries Act: Title 16 U.S. Code section 1431 et seq.
 - (e) U.S. Coast Guard Maritime Law Enforcement Manual (MLEM), COMDTINST M16247.1 (series) (FOUO)
 - (f) Committee Management Policies and Procedures, COMDTINST 5420.37 (series)
 - (g) American Antiquities Act of 1906: Title 54 U.S. Code, sections 320301- 320303
 - (h) Coast Guard Standard Operational Planning Process/Global Force Management, COMDTINST 3120.4 (series)
 - (i) Operational Reporting, COMDTINST M3123.13 (series)
 - (j) Protected Living Marine Resources Program, COMDTINST 16475.7 (series)
 - (k) Proclamation 9496, Northeast Canyons and Seamounts Marine National Monument, 15 September 2016

1. PURPOSE. This Instruction is to guide Coast Guard involvement in federal marine protected areas.
2. ACTION. All Coast Guard Area, District, and unit commanders, commanding officers, officers-in-charge, assistant commandants, and chiefs of headquarters staff elements must comply with the provisions of this Instruction. Internet release is authorized.

DISTRIBUTION – SDL No. 168

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NON-STANDARD DISTRIBUTION:

3. DIRECTIVES AFFECTED. Coast Guard Operations and Federal Marine Protected Area Programs, COMDTINST 16004.4, is cancelled.

4. BACKGROUND.

- a. Marine Protected Areas (MPA): As described in Reference (a), Coast Guard involvement with MPAs harkens back to the 1820s with protection of live oak trees used for shipbuilding. Soon after, the Revenue Cutter Service was tasked with enforcing seal, otter, and whale harvest requirements. Today, the National Oceanographic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) administers 13 sanctuaries and five marine national monuments. National marine sanctuaries are designated based on their "special national significance" due to ecological, historical, recreational, or aesthetic attributes. This Instruction ensures that Coast Guard work with federal MPAs, as defined below, is consistent with the policies set forth in References (b) and (c), and advances the Coast Guard's legacy of service as a steward of the Nation's marine resources.
- b. National Marine Sanctuaries: Finding that areas of the marine environment have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities, Congress passed Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (codified at 16 U.S.C. 1431, et seq.). Referred to as the National Marine Sanctuaries Act (NMSA) since 1992, and last amended in 2002, Reference (d) authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries after reaching a finding that such designation is essential to promote comprehensive management of their unique ecological, historical, recreational, and aesthetic resources and other findings, and after consulting with various Congressional committees, and others. In accordance with NMSA, national marine sanctuaries are managed to enhance the conservation, public awareness, understanding, appreciation, and wise and sustainable use of marine resources located within the designated area.
 - (1) Coordination of relevant waterways management activities, marine environmental protection activities, and targeted and opportunistic enforcement of sanctuary regulations supports attainment of the objectives set out in the NMSA. In waters beyond state jurisdiction, the Coast Guard is the primary maritime enforcement agency for sanctuary regulations. Under 16 U.S.C. 1437 (c) and (d), and summarized in Reference (e), the NMSA provides for both civil and criminal penalties. Where federal marine sanctuaries lie in state waters, NOAA coordinates with state enforcement agencies. This does not preclude Coast Guard involvement.
 - (2) NOAA's National Marine Sanctuary Program (NMSP) is administered by the Secretary of Commerce through the National Ocean Service (NOS) and its Office of National Marine Sanctuaries (ONMS). According to its September, 2017 five-year strategy, the NMSP's mission is to "Protect treasured places in the Ocean and Great Lakes" ONMS is responsible for carrying out this mission independently, and

through cooperative partnerships with Federal, tribal, state, and local agencies; educational and research institutions; and nongovernmental organizations.

- (3) The Marine Protected Areas Federal Advisory Committee was established by Executive Order 13158 directing the Department of Commerce and the Department of Interior, other Federal agencies and states, territories and tribes to support and maintain a system of marine protected areas in the United States. The Order establishes the Marine Protected Areas Federal Advisory Committee and the Marine Protected Area Center in NOAA's National Ocean Service, to support marine protected areas (including those established by authorities other than the federal government) and to promote a systematized approach to protected area management.
- c. National Marine Monuments: The Antiquities Act, Reference (f), gives the President of the United States the authority to, by presidential proclamation, create national monuments on land owned or controlled by the Federal Government for the protection of historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest. Marine national monuments have also been designated under Reference (f) including the Marianas Trench, Pacific Remote Islands and Rose Atoll national monuments. The Papahānaumokuākea Marine National Monument, established in 2006, is included in the system of national marine sanctuaries and co-managed by NOAA's Marine National Monument Program, the Department of Interior, and the State of Hawaii. Reference (j) created the Northeast Canyons and Seamounts National Marine Monument in 2016, which is jointly managed by the Department of Commerce and the Department of Interior.
5. DISCLAIMER. This Guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide operational guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard. This guidance is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or personnel, or any person.
6. MAJOR CHANGES. Changes from Coast Guard Operations and Federal Marine Protected Area Programs, COMDTINST 16004.4, include the addition of the Northeast Canyons and Seamounts Marine National Monument, corrects consultation language requirements under the National Marine Sanctuaries Act, and corrects formatting errors throughout the document.
7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
 - a. The development of this Instruction and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, and are categorically excluded (CE) under current USCG CE # 33 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series).

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Because this Instruction contains guidance on, and provisions for, compliance with applicable environmental mandates, Coast Guard categorical exclusion #33 is appropriate.

- b. This Directive will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any federal, state, or local laws or administrative determinations relating to the environment. Due to the administrative and procedural nature of this Instruction, and the environmental guidance provided within it for compliance with all applicable environmental laws prior to promulgating any directive, all applicable environmental considerations are addressed appropriately in this Instruction.
8. DISTRIBUTION. No paper distribution will be made of this Instruction. An electronic version will be located on the following Commandant (CG-612) web sites. Internet: <http://www.dcms.uscg.mil/directives/>, and CGPortal: <https://cgportal2.uscg.mil/library/directives/SitePages/Home.aspx>
 9. PROCEDURES.
 - a. The Deputy Commandant for Operations (DCO) shall, through Commandant (CG-MLE):
 - (1) Serve as the headquarters point of contact with the NOAA Office of National Marine Sanctuaries, and for related operational and law enforcement issues of national scope.
 - (2) Provide ex-officio representation on the MPA Federal Advisory Committee in accordance with existing guidance including Reference (f) .
 - (3) In coordination with Commandant (CG-LMI) and other affected offices, maintain an interagency agreement with NOAA, establishing law enforcement priorities for the Coast Guard in federal MPAs.
 - (4) Refer marine environmental protection and contingency planning issues related to federal MPAs to the Office of Environmental Response Policy (CG-MER).
 - (5) Refer navigation and waterways management issues related to federal MPAs to the Office of Navigation Systems (CG-NAV) or the Office of Waterways and Ocean Policy (CG-WWM).
 - b. Area Commanders shall:
 - (1) Establish and maintain communication with ONMS regional staff within the Area's area of responsibility (AOR), and report changes in MPA regulations and anticipated shifts in focus and tempo of surveillance and enforcement operations to Commandant (CG-MLE) via monthly Living Marine Resources summaries, required by Reference (e).

- (2) Designate the appropriate office and official to coordinate Area, District, and (if warranted) Sector participation in MPA advisory councils coordinated by the ONMS in accordance with Reference (f).
- (3) Factor existing MPA enforcement needs and changes resulting from new or amended MPA regulations, boundaries and patterns of use into the Strategic Operational Planning Process in accordance with Reference (g).
- (4) Engage with District and other agency partners to coordinate air station support for site surveillance and enforcement of laws and regulations.
- (5) Ensure units under Area command properly document MPA enforcement and conservation efforts in accordance with Reference (h).

c. District Commanders shall:

- (1) Establish close liaison with the regional NOAA Special Agent in Charge (SAC) and the local MPA manager(s) to target enforcement activity and to ensure consistent, coordinated, and timely analysis of enforcement needs. Procedures that constitute the baseline enforcement strategy and tactics must be communicated to the Area Commander annually and incorporated into the District Protected Living Marine Resource Plan required by Reference (i). Procedures must be updated or revalidated when any of the following occurs: approval of new or revised site management plans; organizational changes; or when substantial changes to MPA regulations are made that affect Coast Guard responsibilities, priorities, or the level of effort assigned for implementation.
- (2) Provide routine surveillance of MPAs within the AOR concurrently with other Coast Guard operations, supplemented with targeted or dedicated law enforcement patrols as appropriate. Surveillance and enforcement considerations must be incorporated into vessel and aircraft patrol orders on a routine basis.
- (3) Confer with their servicing legal office or their servicing environmental staff prior to taking actions, including authorizations of private activities, that they believe are “likely to destroy, cause the loss of, or injury to, a sanctuary resource” and, specific to the Stellwagen Bank National Marine Sanctuary, on actions that “may affect” the resources of the sanctuary to determine if consultation under Section 304(d) of Reference (d) is necessary, and to determine if there are any other environmental laws triggered by their proposed actions.
- (4) Routinely provide notice to NOAA’s Office of Law Enforcement (OLE) and the MPA site manager(s) regarding Coast Guard operations that occur or are scheduled to occur within sanctuary boundaries, to the extent that such information is available for release and does not compromise operational security.
- (5) Participate in Sanctuary Advisory Council meetings in accordance with References (e) and (f), and work with ONMS and other federal, tribal, state, and local agencies

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during the development stage of federal MPA management plans and regulations in order to provide advice on: 1) the enforceability and safety of regulatory proposals; 2) suitability and availability of Coast Guard resources for enforcing the regulations; 3) the extent to which any regulations may impede Coast Guard operations within sanctuary boundaries; and 4) other implications bearing on Coast Guard equities.

- (6) Assist NOAA OLE, ONMS, and the local sanctuary manager(s) in assessing the scope and intensity of user activities in the sanctuaries through cooperatively planned surveillance patrols.
- (7) Consistent with case package requirements in Appendix G of Reference (e), review violations of federal MPA regulations and forward completed enforcement case documentation to the cognizant NOAA General Counsel's Enforcement Section Office.
- (8) Coordinate cooperation of the Coast Guard Auxiliary with the local sanctuary manager(s) to provide up-to-date educational material to the boating public during boating safety courses, courtesy safety examinations, and other activities as deemed appropriate.

10. RECORDS MANAGEMENT CONSIDERATIONS. This Instruction has been thoroughly reviewed during the directives clearance process, and it has been determined there are no further records scheduling requirements, in accordance with Federal Records Act, 44 U.S.C. 3101 et seq., NARA requirements, and Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).

11. DISCUSSION.

- a. Marine Protected Areas (MPA). The term "marine protected area" is a generic term that refers to specific geographic areas where a constraint has been placed on human activity to protect a key characteristic such as a cultural resource or a vulnerable natural attribute such as coral reef or large whale foraging areas. For the purposes of this Instruction, the term "marine protected area" refers only to a national marine sanctuary federally designated under the NMSA or a marine national monument federally designated under the Antiquities Act.
- b. National Marine Sanctuaries. National marine sanctuaries address the national priorities in NMSA through site-specific management led by a Sanctuary Superintendent and with the advice of an appointed Sanctuary Advisory Council. Each national marine sanctuary and each marine national monument is unique. Designation documents, regulations and management plans are tailored to address the specific characteristics that prompted the designation. More information about national marine sanctuaries can be found on [NOAA's world wide website](#) and through local and regional staff.
- c. Marine National Monuments. Management arrangements for national monuments vary based on the specific attributes being protected. The management structure is initially identified in the pertinent Executive action. Marine national monument designations

direct the use of existing authorities to protect significant natural resources and attributes. Specific considerations and directives from the designating Presidential Proclamations are codified in regulations following the designation.

- d. **Site Management Plans.** A site management plan is developed and maintained for national marine sanctuaries with advice and input from the site's sanctuary advisory council. Management plans establish site-specific regulations and identify other measures for achieving sustainable use and resource protection, and tailor programs to meet the needs of the individual sites.
- e. **Consultations Under NMSA 304(d).** Agencies considering actions that are likely to destroy, cause the loss of, or injure (or may affect in the case of Stellwagen Bank NMS) any sanctuary resources within national marine sanctuaries are required to engage NOAA through a consultation process per section 304(d) of the National Marine Sanctuaries Act. If an agency will affect a NMS such that section 304(d) is triggered, it is also important to understand that other environmental laws may also be triggered including, but not limited to, the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and Marine Mammal Protection Act (MMPA). If NOAA recommends "reasonable and prudent alternatives" that the federal agency decides not to follow, the federal agency must provide NOAA with a written statement explaining the reasons for that decision. Because the statute allows the federal agency to reject NOAA's recommendations, however, any regulatory scheme which assumes NOAA has the authority to prohibit a federal activity raises significant legal concerns. I.e., if the Coast Guard, due to the nature of its operations, continues to carry out an activity that NOAA prohibits, it will result in conflict between the two agencies. Thus, Coast Guard units will not apply for a permit without first receiving an analysis from their servicing legal office.
- f. **Efficient Coordination.** Area and District offices will work with regional and site-specific ONMS and NMFS offices to ensure that Coast Guard and NOAA enforcement efforts are coordinated, mutually supporting, and responsive to sanctuary management priorities, complementing the efforts of other federal, tribal, state, and local agencies. Other Coast Guard activities that support effective management and may benefit from coordination include, but are not limited to, waterways management operations and marine environmental protection and response.
- g. **Positive Interagency Engagement.** The Coast Guard will actively engage NOAA and other trustee agencies during the evaluation proposals for new sanctuaries, changes to sanctuary boundaries, and the development of management plans and regulations for sanctuaries. Early involvement in the development stage of management plans and regulations is important to ensure that NOAA clarifies in such regulations that the Coast Guard is exempt from any regulatory prohibitions that encompass actions the Coast Guard can be expected to take, in order to be able to carry on its activities, which include enforcing regulations and supporting management programs within the sanctuaries.
- h. **Effective Outreach and Education.** ONMS protects sanctuary resources primarily through robust public education programs intended to raise awareness and gain voluntary compliance. The Coast Guard, including the Coast Guard Auxiliary, will assist ONMS

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by educating the boating public about MPA regulations. The Coast Guard Auxiliary will incorporate pertinent information provided by ONMS into its courses, enhancing public awareness of and compliance with MPA regulations, and promoting public stewardship of these unique national resources.

- i. Marine Protected Area (MPA) Enforcement. NOAA has adopted the Community Oriented Policing and Problem Solving (COPPS) approach toward enforcement at ONMS sites, a posture that prioritizes education as a means of gaining voluntary compliance. The objective is to foster compliance among users of the Nation's marine sanctuaries by promoting shared interests and an ethic of stewardship toward the living and cultural resources that the sanctuaries were created to protect. The Coast Guard supports this approach. However, sanctuaries still require routine law enforcement patrols to complement this approach and to effectively deter, detect, and address violations.

12. FORMS. None.

13. REQUEST FOR CHANGES. Provide recommended program improvements along with suggested remedies for better aligning program activities and resolving conflicting priorities to Area commands for review and (if applicable) endorsement and forwarding to The Living Marine Resources (LMR) Enforcement Division (CG-MLE-4). Adopted recommendations will be incorporated into future guidance.

DANIEL B. ABEL /s/
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Deputy Commandant for Operations