

Presidential Documents

Executive Order 13196 of January 18, 2001

Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106–513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–e.e.), and other pertinent statutes, it is ordered as follows:

Sec. 1. Preamble. On December 4, 2000, I issued Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) pursuant to my authority under the National Marine Sanctuaries Act, as amended by the National Marine Sanctuary Amendments Act of 2000 (Act). In establishing the Reserve, I set forth a number of conservation measures and created specific Reserve Preservation Areas to protect the coral reef ecosystem and related marine resources and species (resources) of the Reserve. The Act provides that no closure areas can become permanent without adequate notice and comment. Accordingly, I proposed to make permanent the Reserve Preservation Areas and initiated a 30-day comment period on this proposal. I also sought comment on the conservation measures for the Reserve. On my behalf, the Secretary of Commerce received the public comments and held seven public hearings, including six throughout Hawaii. After considering the comments expressed at the hearings and received in writing, I have determined to make permanent the Reserve Preservation Areas with certain modifications set forth below. Further, I have modified certain conservation measures to address concerns raised, particularly regarding commercial and recreational fishing within the Reserve. With this action, the establishment of the Reserve under the Act, including the conservation measures and permanent Reserve Preservation Areas, is complete. The Secretary of Commerce will manage the Reserve pursuant to Executive Order 13178, as modified by this order, under the Act. The Secretary shall also initiate the process to designate the Reserve as a National Marine Sanctuary, as required by the Act.

Sec. 2. Purpose. The purpose of this order is to amend Executive Order 13178, and to make permanent Reserve Preservation Areas, as modified below, to ensure the comprehensive, strong, and lasting protection of the resources of the Northwestern Hawaiian Islands.

Sec. 3. Amendments to Sections 7 of Executive Order 13178.

1. Section 7(a)(1) of Executive Order 13178 is hereby amended by revising the first sentence to read as follows:

“Commercial Fishing. All currently existing commercial Federal fishing permits and current levels of fishing effort and take, which also includes the non-permitted level of trolling for pelagic species by currently permitted bottom fishers, as determined by the Secretary and pursuant to regulations in effect on December 4, 2000, shall be capped as follows:”

2. Section 7(a)(1)(C) of Executive Order 13178 is hereby revised to read as follows:

“(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing as follows:

(1) Bottomfishing—the annual aggregate level for each permitted bottomfisher shall be that permittee’s individual average taken over the 5 years preceding December 4, 2000, as determined by the Secretary, provided that the Secretary, in furtherance of the principles of the reserve, may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(2) All other commercial fishing—the annual aggregate level shall be the permittee’s individual take in the year preceding December 4, 2000, as determined by the Secretary.”

3. A new section 7(a)(1)(F) is hereby added to Executive Order 13178 and reads as follows:

“(F) Trolling for pelagic species shall be capped based on reported landings for the year preceding December 4, 2000.”

4. Section 7(b)(4) is revised to read as follows:

“(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except:

(A) fish parts (i.e., chumming materia or bait) used in and during fishing operations authorized under this order;

(B) biodegradable effluent incident to vessel use and generated by a marine sanitation device in accordance with section 312 of the Federal Water Pollution Control Act, as amended;

(C) water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the Federal Water Pollution Control Act), excluding oily wastes from bilge pumping; or

(D) cooling water from vessels or engine exhaust; and”.

Sec. 4. Amendments to Sections 8 of Executive Order 13178.

1. Section 8 of Executive Order 13178 is modified by substituting “provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, respectively,” for “provided that bottomfishing in accordance with the requirements of section 7(a)(1)” everywhere the latter phrase appears in section 8.

2. Section 8(a)(1)(A) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

3. Section 8(a)(1)(B) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

4. Section 8(a)(1)(D) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

5. Section 8(a)(1)(E) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

6. Section 8(a)(1)(G) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 50fm.”

7. Section 8(a)(1)(I) is revised to read “Kure Atoll.”

8. Sections 8(a)(2)(D) and (E) are hereby deleted and a new section 8(a)(3) is hereby substituted as follows:

“(3) Twelve nautical miles around the approximate geographical centers of

(A) The first bank west of St. Rogation Bank, east of Gardner Pinnacles, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(B) Raita Bank, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(C) Provided that both banks described above in (3)(A) and (3)(B) shall only continue to allow commercial bottomfishing and commercial and recreational trolling for pelagic species after the 5-year time period if it is determined that continuation of such activities will have no adverse impact on the resources of these banks.”

Sec. 5. Reserve Preservation Areas. The Reserve Preservation Areas, as modified in sections 3 and 4 of this order, are hereby made permanent in accordance with the Act.

Sec. 6. Judicial Review. 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.



THE WHITE HOUSE,
January 18, 2001.