



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG-2013-0786]**

**RIN 1625-AA00**

**Safety Zone; San Diego Shark Fest Swim; San Diego Bay, San Diego, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone upon the navigable waters of the San Diego Bay, San Diego, CA, in support of San Diego Shark Fest Swim. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 9:15 A.M. to 10:15 A.M. on October 6, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2013-0786]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 A.M. and 5 P.M., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278-7656, e-mail [d11marineeventssandiego@uscg.mil](mailto:d11marineeventssandiego@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical details of the San Diego Shark Fest Swim were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because it is impractical and contrary to the public interest. The Coast Guard did not have the necessary event information in time to provide both a comment period and allow for a 30 day delayed effective date. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

#### B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 et seq.). The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay for the October 6, 2013 San Diego Shark Fest Swim, consisting of 400 swimmers swimming a predetermined course. The sponsor will provide 18 safety vessels

including boats, paddle boards, and PWCs for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

#### C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 9:15 A.M. to 10:15 A.M. on October 6, 2013. The limits of the safety zone will be the navigable waters of the San Diego Bay bounded by the following coordinates: 32°42.17' N, 117°09.83' W; 32°41.66' N, 117°09.88' W; along the shore line to 32°41.29' N, 117°09.77' W; 32°41.50' N, 117°09.73' W; 32°42.05' N, 117°09.68' W; along the shore line to 32°42.17' N, 117°09.83' W.

This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the San Diego Shark Fest Swim. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone. Immediately before and during the swim event, Coast Guard Sector San Diego Joint Harbor Operations Center will issue Broadcast Notice to Mariners on the location and enforcement of the safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may be allowed to transit through the designated safety zone during the specified times if they request and obtain authorization from the

Captain of the Port, or his designated representative.

Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the aforementioned portion of the San Diego Bay from October 6, 2013, from 9:15 A.M. to 10:15 A.M.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will only be in effect for one hour in the morning when vessel traffic is low. Vessel traffic can transit safely around the zone when authorized.

## 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11-595 to read as follows:

§ 165.T11-595 Safety Zone; San Diego Shark Fest Swim; San Diego Bay, San Diego, CA.

(a) Location. The limits of the safety zone will be the navigable waters of the San Diego Bay bounded by the following coordinates: 32°42.17' N, 117°09.83' W; 32°41.66' N, 117°09.88' W; along the shore line to 32°41.29' N, 117°09.77' W; 32°41.50' N, 117°09.73' W; 32°42.05' N, 117°09.68' W; along the shore line to 32°42.17' N, 117°09.83' W.

(b) Enforcement Period. This section will be enforced from 9:15 A.M. to 10:15 A.M. on October 6, 2013. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) Definitions. The following definition applies to this section: designated representative, means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law

enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) Regulations.

(1) Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: September 6, 2013

S. M. Mahoney,  
Captain, U.S. Coast Guard,

Captain of the Port San Diego.

[FR Doc. 2013-23264 Filed 09/24/2013 at 8:45 am; Publication

Date: 09/25/2013]