



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0721]

RIN 1625-AA00

Safety Zone; TAKE MARU 55 Vessel Salvage; Cocos Island, Merizo, Guam

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a safety zone in support of vessel salvage operations for the grounded commercial fishing vessel, TAKE MARU 55, in the waters west of Cocos Island. This safety zone will encompass a 400 yard area centered around the TAKE MARU 55, located at approximately 13 degrees 14 minutes 7 seconds North Latitude, 144 degrees 38 minutes 27 seconds East Longitude, the waters west of Cocos Island (North American Datum (NAD) 1983).

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 30, 2014. For the purposes of enforcement, actual notice will be used from August 2, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble are part of docket USCG-2014-0721. 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. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Chief Kristina Gauthier, U.S. Coast Guard Sector Guam at (671) 355-4866. If you have any questions on viewing or submitting material to the docket, call Cheryl Collins Program Manager, Docket Operations, at (202) 366-9826 or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of acronyms

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

## A. Regulatory 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 doing so would be impracticable. The Coast Guard received notice of the vessel grounding on July 30, 2014. Due to the emergent nature of this incident, the Coast Guard did not have time to issue a notice of proposed rulemaking.

Under 5 U.S.C. 553(d)(3), for the same reason mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the late notice and inherent danger in the salvage of a grounded vessel, delaying the effective period of this safety zone would be contrary to the public interest.

## B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other

limited access areas: 33 U.S.C 1231; 33 CFR 1.05-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

A safety zone is a water area, shore area, or water and shore area, for which access is limited to authorized person, vehicles, or vessels for safety purposes. The purpose of this rulemaking is to protect mariners from the potential hazards associated with salvage operations. Approaching too close to such operations could potentially expose the mariner to hazardous conditions.

#### C. Discussion of Rule

In order to protect the public from the hazards associated with the grounded vessel and subsequent salvage operations, the Coast Guard is establishing a temporary safety zone, effective August 2, 2014 to October 30, 2014. The enforcement period for this rule is from August 2, 2014 to October 30, 2014.

The safety zone is located within the Guam COTP Zone (See 33 CFR 3.70-15), and will cover all waters bounded by a circle with a 400-yard radius centered around the TAKE MARU 55, located at approximately 13 degrees 14 minutes 7 seconds North Latitude, 144 degrees 38 minutes 27 seconds East Longitude, from the surface of the water to the ocean floor.

The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring

within this zone is prohibited unless authorized by the COTP or a designated representative thereof. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce the zone. The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime safety. Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1232 and / or 50 U.S.C. 192.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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. The Coast Guard expects the economic impact of this rule to be extremely minimal based on the limited

geographic area affected by it.

## 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.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would affect the following entities, some of which might be small entities: the owners or operators of Cocos Island Resort restricting visitors from this portion of the zone from August 2, 2014 to October 30, 2014. This rule will be in effect until all salvage and clean up operations are completed and vessel traffic can pass safely around the safety zone. The safety zone does not encompass the entirety of Cocos Island and safe transit is still allowed to Cocos Island. Further, traffic will be allowed to pass through the zone with the permission of the Coast Guard Patrol Commander

who can be reached by phone at 671-355-4821. During the effective period, we will issue maritime advisories widely available to users of Cocos Island and surrounding waters.

### 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 calls for no 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it 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 or more in any one year. Though this

rule will not result in such 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 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 a closed area of Cocos Island, to vessel traffic and water sports above and below the water, until further notice. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Instruction.

#### List of Subjects 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 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0721 to read as follows:

§ 165.T14-0721 Safety Zone; TAKE MARU NO. 55 Vessel Salvage, Cocos Island, Merizo, Guam.

(a) Location. The following area, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15), from the surface of the water to the ocean floor, is a safety zone: All waters bounded by a circle with a 400-yard radius, centered around the TAKE MARU 55, located at approximately 13 degrees 14 minutes 7 seconds North Latitude, 144 degrees 38 minutes 27 seconds East Longitude, (NAD 1983).

(b) Enforcement period. This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 30, 2014. For the purposes of enforcement, actual notice will be used from August 2, 2014,

until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) Regulations. The general regulations governing safety zones contained in §165.23 apply. Entry into, transit through or within this zone is prohibited unless authorized by the COTP or a designated representative thereof.

(d) Enforcement. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(e) Waiver. The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 2, 2014.

J. B. Pruett,  
Captain, U.S. Coast Guard,  
Captain of the Port Guam.

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