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9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2015-0729]

RIN 1625-AA01

Port of Miami Anchorage Area; Atlantic Ocean, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is dividing its Miami anchorage ground into two separate anchorage areas. This action is necessary to reduce potential damage to threatened coral posed by anchoring vessels. The area for vessels to anchor will be reduced by approximately 3 square nautical miles, but this rule still leaves vessels with approximately 1.5 square miles of anchorage areas.

**DATES:** This rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0729 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Paul Lehmann, Coast Guard Seventh District Prevention Waterways

Management Division, U.S. Coast Guard; telephone (305) 415-6796, email Paul.D.Lehmann@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On December 1, 2015, the Coast Guard published a notice of study that indicated we were evaluating amending the Miami Anchorage, based on the location of coral reefs off the coast of Florida. The Coast Guard received four comments in response to the notice of study during the period that ended on February 1, 2016. In coordination with several interested parties, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) on May 10, 2016 (81 FR 28788). Four additional comments were received in response to the NPRM. The comment period for the NPRM closed on July 11, 2016.

Through continued cooperation and research with stakeholders, the Coast Guard amended the original locations and requirements stated in the NPRM, and published these changes in a Supplemental Notice of Proposed Rulemaking (SNPRM), on February 22, 2017 (82 FR 11329). We received five written submissions on the SNPRM during the comment period that ended on March 24, 2017. We did not receive any oral comments.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471. The Seventh District Commander has determined that the new locations of the anchorage provide both a safe anchorage ground for vessels, as well as provide for protection of the coral reef and uphold the environmental protection mission of the Coast Guard.

### **IV. Discussion of Comments, Changes, and the Rule**

On December 1, 2015, the Coast Guard published a notice of study that indicated we were evaluating amending the Miami Anchorage to divide the anchorage into two smaller anchorage areas. The proposed amendment was designed in coordination with a variety of local stakeholders, including the South East Florida Coral Reef Initiative (SEFCRI). Comment provided by these stakeholders, academic research, and environmental reports have raised concerns with the Coast Guard about the potential for damage to the Florida Reef in the Miami Anchorage. Examples of the body of work that influenced the Coast Guard in proposing this amendment may be found in the docket.

In response to the notice of study, the Coast Guard received four comments. These comments were addressed in an NPRM published on May 10, 2016. In response to the NPRM, we received four additional comments. Two of the comments, one by the local non-profit Miami Waterkeeper and the other by a private citizen, supported our planned modification of the Miami Anchorage. The third and fourth comments were submitted by the Biscayne Bay Pilots Association.

The Biscayne Bay Pilots Association (pilots) submitted a comment, through Becky Hope of the Port of Miami, on May 17, 2016. This comment requested the Coast Guard evaluate changes in the proposed anchorage, including shifting the outer

anchorage west and shifting the southern boundary of the outer anchorage north. In response to these comments, the Coast Guard met with the Pilots to discuss the requests and the basis at which we arrived at the current anchorage configuration. During the meeting the Coast Guard agreed to shift the western boundary of the outer anchorage approximately 300 feet to the west to provide more room for large anchoring vessels. This change does not have any effect on coral or hard bottom as the sea floor in that area is sand.

On June 11, 2016, the Pilots submitted a follow up comment to the public docket expressing concern that the outer anchorage would expose vessels to increased current and waves and, they claim, could increase the chance a vessel would drag anchor. In order to properly assess environmental conditions and risk of an anchor drag, the Coast Guard consulted with the National Weather Service and Maersk training center. The National Weather Service conducted a study, analyzing the previous year's current in the vicinity of the anchorage. The Weather Service found that the average current in the area of the outer anchorage over the previous year was approximately 1.2 knots, with currents ranging plus or minus half a knot from the mean current seventy percent of the time. This information was provided to the Maersk training center in Svendborg, Denmark. Subject matter experts at the training school indicated that the conditions posed no significant hazard and that captains would have the training and experience to set an anchor in the deeper waters of the outer anchorage.

Due to the additional changes requested by the various parties involved, we published a Supplemental Notice to Proposed Rulemaking on February 22, 2017. The Coast Guard received five comments in response to this SNPRM. The Florida

Department of Environmental Protection supports this project as a means to reduce coral reef and hardbottom impacts. The additional comments were in support of the rule, citing the desire to protect natural resources while acknowledging perceived minimal impact to industry and commerce.

The District Commander is amending the Miami Anchorage by dividing the anchorage into two smaller anchorage areas. The coordinates will establish two anchorage areas with a combined area of approximately 1.5 square miles and reduce the total anchorage area by approximately 3 square nautical miles. The anchorage areas will be established with the following coordinates:

Small inner western anchorage (approximate water depths: 45 ft)

	Latitude	Longitude
NW Corner	25° 47'57.687"N	080° 05'37.225"W
NE Corner	25° 47'57.341"N	080° 05'26.466"W
SE Corner	25° 46'31.443"N	080° 05'27.069"W
SW Corner	25° 46'31.557"N	080° 05'37.868"W

Large outer eastern anchorage (approximate water depths: 120 ft)

	Latitude	Longitude
NW Corner	25° 48'13.841"N	080° 04'59.155"W
NE Corner	25° 48'04.617"N	080° 04'04.582"W
SE Corner	25° 46'32.712"N	080° 04'28.387"W
SW Corner	25° 46'43.770"N	080° 05'02.360"W

We made minor changes to the anchorage regulations in response to comments received from the Biscayne Bay Pilots Association and others during the NPRM stage. Those changes were incorporated into the language of the SNPRM. For example, vessels anchored in the Miami Anchorage are required to maintain a 24-hour bridge watch with a licensed or credentialed deck officer proficient in English, vessels are prohibited from anchoring with engines off or in a “dead ship” status, and vessels are required to seek

permission of the Captain of the Port Miami prior to anchoring for longer than 72 hours.

Also, we amended the language that utilized the Biscayne Bay Pilots via VHF-FM channel 12 or 16 to contact the Captain of the Port Miami in order to simplify the process and improve consistency. Now mariners may contact the Captain of the Port Miami directly via VHF-FM channel 16. In addition to the above changes, the anchoring regulations have been reordered and reworded. Finally, the Coast Guard will be submitting amendments to the local Coast Pilot that provides improved guidance to vessels planning to anchor in the outer anchorage.

## **V. 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 and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of

planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017). This regulatory action determination is based on the relatively minor change being made to the regulation. This regulatory action determination is based on the relatively minor changes being proposed to the regulation such as notice and watch keeping requirements. The regulation will however ensure 1.5 square miles of anchorage areas continue to exist. Some other changes are that vessels will be prohibited from anchoring with engines off or in a “dead ship” status and vessels will be required to seek permission of the Captain of the Port Miami prior to anchoring for longer than 72 hours.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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.

While some owners or operators of vessels intending to use the anchorage may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 section. 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.

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.

#### C. 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).

#### D. Federalism and Indian Tribal Governments

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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-

4370f), and have determined that it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule reduces the size of an existing anchorage area. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(f) of the Instruction, which pertains to minor regulatory changes that are editorial or procedural in nature. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble.

#### G. 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.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

### PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.188 to read as follows:

§ 110.188 Atlantic Ocean off Miami and Miami Beach, Fla.

- (a) *The anchorage areas.* (1) *Anchorage A.* All area of the Atlantic Ocean, encompassed by a line connecting the points of the following North America

Datum 83 coordinates:

Latitude	Longitude
25° 47'57.687"N	080° 05'37.225"W
25° 47'57.341"N	080° 05'26.466"W
25° 46'31.443"N	080° 05'27.069"W
25° 46'31.557"N	080° 05'37.868"W

(2) *Anchorage B.* All area of the Atlantic Ocean, encompassed by a line connecting the points of the following North America Datum 83 coordinates:

Latitude	Longitude
25° 48'13.841"N	080° 04'59.155"W
25° 48'04.617"N	080° 04'04.582"W
25° 46'32.712"N	080° 04'28.387"W
25° 46'43.770"N	080° 05'02.360"W

(b) *The regulations.* (1) Vessels in the Atlantic Ocean in the vicinity of Port of Miami must anchor only within the anchorage areas hereby defined and established, except in cases of emergency.

(2) Prior to entering the anchorage areas, all vessels must notify the Coast Guard Captain of the Port via VHF-FM channel 16.

(3) All vessels within the designated anchorages must maintain a 24-hour bridge watch by a licensed or credentialed deck officer proficient in English, monitoring VHF-FM channel 16. This individual must confirm that the ship's crew performs frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(4) Vessels may anchor anywhere within the designated anchorage areas provided that: such anchoring does not interfere with the operations of any other vessels currently at anchorage; and all anchor and chain or cable is positioned in such a manner

to preclude dragging over reefs.

(5) No vessel may anchor in a “dead ship” status (that is, propulsion or control unavailable for normal operations) without the prior approval of the Captain of the Port. Vessels experiencing casualties, such as main propulsion, main steering, or anchoring equipment malfunction, or which are planning to perform main propulsion engine repairs or maintenance, must immediately notify the Coast Guard Captain of the Port via Coast Guard Sector Miami on VHF-FM channel 16.

(6) No vessel may anchor within the designated anchorages for more than 72 hours without the prior approval of the Captain of the Port. To obtain this approval, contact the Coast Guard Captain of the Port via VHF-FM channel 16.

(7) The Coast Guard Captain of the Port may close the anchorage areas and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety or security.

(8) Commercial vessels anchoring under emergency circumstances outside the anchorage areas must shift to new positions within the anchorage areas immediately after the emergency ceases.

(9) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, U.S. Coast Guard, Miami, Florida, may direct relocation of any vessel anchored within the anchorage areas. Once directed, such vessel must get underway at once or signal for a tug, and must change position as directed.

Dated: June 12, 2017.

S. A. Buschman,  
Rear Admiral, U.S. Coast Guard,  
Commander, Seventh Coast Guard District.

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