



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0042]

RIN 1625-AA00

Safety Zones; Humboldt Bay Bar, Eureka, CA, Noyo River Entrance, Ft. Bragg, CA, and Crescent City Harbor Entrance Channel, Crescent City, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Interim rule and request for comments

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of the Humboldt Bay Entrance Channel, of Eureka, CA, Noyo River Entrance Channel, of Fort Bragg, CA, and Crescent City Harbor Entrance Channel, of Crescent City, CA to safeguard navigation safety during extreme environmental conditions. These safety zones are established to protect the safety of vessels transiting the areas from the dangers associated with extreme breaking surf and high wind conditions occurring in the Humboldt Bay Bar Channel, Noyo River Entrance Channel, and Crescent City Harbor Entrance Channels. When enforced, entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP), San Francisco or his designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on March 31, 2018. For the purposes of enforcement, actual notice will be used from October 27, 2017 until [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER]. This rule will be enforced when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20 foot breaking seas at each location. Enforcement will be announced via local Broadcast Notice to Mariners.

ADDRESSES: You may submit comments view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type [USCG-2017-0042] in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Lieutenant Commander Rebecca Deakin, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7401 or e-mail at D11-PF-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

APA	Administrative Procedures Act
COTP	Captain of the Port
DHS	Department of Homeland Security
EO	Executive Order
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim 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. Publishing an NPRM would be impracticable in this case due to having received initial notice of the extreme environmental and weather conditions substantiating this rule on October 19, 2017.

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, as delaying the effective date of this rule would be impracticable due to the timing of the forecast environmental and weather conditions.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP), San Francisco has determined that this rule is necessary to provide for the safety of Coast Guard members, mariners, and other vessels transiting the area where notable hazards associated with the extreme environmental conditions have been observed in the Humboldt Bay Entrance Channel near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA.

IV. Discussion of the Rule

This rule establishes three safety zones, respectively in the navigable waters of the Humboldt Bay Entrance Channel near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA, when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20 foot breaking seas at each location. Enforcement will be announced via Broadcast Notice to Mariners between 12:01 a.m on October 27, 2017 until 11:59 p.m. on

March 31, 2018.

The effect of the temporary safety zones is to restrict navigation in the vicinity of the Humboldt Bay Entrance Channel, Noyo River Entrance Channel, and Crescent City Harbor Entrance Channel while the hazardous conditions associated with extreme environmental conditions exist, and until the Coast Guard deems the safety zone is no longer needed. Except for persons or vessels authorized by the COTP, no person or vessel may enter or remain in the restricted areas during times of enforcement. These regulated areas are needed to keep vessels away from the immediate vicinity of the hazardous conditions associated to ensure the safety of transiting vessels in each respective area.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders (EOs) related to rulemaking. Below we summarize our analyses based on a number of these statutes and EOs, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

EOs 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 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, disruptive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of 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.”

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. This safety zone is limited in size, duration and location. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Local Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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. This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time while hazardous

conditions exist, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.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 (Pub. L. 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.

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 EO 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 EO 13132.

Also, this rule does not have tribal implications under EO 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 above.

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 will not result in such 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.ID, 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 a safety zone of limited size and duration. 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 Record of Environmental Consideration (REC) are available in the docket for this rulemaking. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this Temporary Interim Rule as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165-900 to read as follows:

§165-900 Safety zones; Humboldt Bay Bar, Noyo River Entrance, and Crescent City Harbor Entrance Channel Closures, Humboldt Bay, Eureka, CA.

(a) Location. Temporary safety zones are established in:

- (1) The navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Humboldt Bay, CA;
- (2) The navigable waters of the Noyo River Entrance Channel as defined by the Area contained seaward of the Line of Demarcation with northern boundary of the line originating in approx position 39°25'41"N, 123°48'37"W and extending 1200 yards at bearing 290° T & southern boundary of the line originating in approx position 39°25'38"N, 123°48'36"W & extending 1200

yards at 281° T, in Fort Bragg, CA;

(3) The navigable waters of the Crescent City Harbor Entrance Channel, as defined by the area contained seaward of the line originating in approx position 41°44'36"N, 124°11'18"W bearing 237°T and extending out to 1 NM of the Line of Demarcation in Crescent City, CA.

(b) Definitions. As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or at a Coast Guard unit or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones.

(c) Regulations. (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within these safety zones are prohibited unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the Humboldt Bay Entrance Channel or Crescent City Harbor Entrance Channel safety zones during times of enforcement shall contact Station Humboldt Bay on VHF-FM channel 16 or at (707) 443-2213 between 6:30 a.m. and 10 p.m., or to Sector Humboldt Bay on VHF-FM channel 16 or at (707) 839-6113 if between 10 p.m. and 6:30 a.m. Vessel operators desiring to enter or operate within the Noyo River Entrance Channel safety zone during times of enforcement shall contact Station Noyo River on VHF-FM channel 16 or at (707) 964-6611 between 6:30 a.m. and 10 p.m., or to Sector Humboldt Bay on VHF-FM channel 16 or at (707) 839-6113 if between 10 p.m. and 6:30 a.m.

(d) Enforcement period. The zones described in paragraph (a) of this section will be effective from October 27, 2017 through March 31, 2018. The zones described in paragraph (a) of this section will be enforced when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20 foot breaking seas at each location. Enforcement will be announced via Broadcast Notice to Mariners. The COTP will notify the maritime community of periods during which these zones will respectively be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

Dated: October 27, 2017

Patrick S. Nelson
Captain, U.S. Coast Guard
Alternate Captain of the Port of San Francisco
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