

class I or class II civil penalty by the Secretary or his delegatee.

(2) *Classes of penalties.*

(i) *Class I.* The amount of a class I civil penalty under this section may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed \$25,000. Before assessing a civil penalty under this subparagraph, the Secretary or his delegatee shall give to the person to be assessed such penalty written notice of the Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to 5 U.S.C. 554 or 556, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) *Class II.* The amount of a class II civil penalty under this section may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed \$125,000. Except as otherwise provided in paragraph (a) of this section, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for hearing on the record in accordance with 5 U.S.C. 554. Proceedings to assess a class II administrative civil penalty under this section will be governed by 33 CFR Part 20.

(3) *Rights of interested persons.*

(i) *Public notice.* Before issuing an order assessing a class II civil penalty under this paragraph, the Secretary shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(ii) *Presentation of evidence.* Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under paragraph (a) of this section, and of the order assessing such penalty. In any hearing held under paragraph (a)(3) of this section, such person shall have a reasonable opportunity to be heard and present evidence.

(iii) *Rights of interested persons to a hearing.* If no hearing is held under paragraph (a)(2) of this section before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such an order, the Secretary or his delegatee to set aside such order and provide a hearing on the penalty. If the

evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Secretary, or his delegatee, shall immediately set aside such order and provide a hearing in accordance with paragraph (a)(2)(ii) of this section. If the Secretary or his delegatee denies a hearing under this clause, the Secretary or his delegatee shall provide to the petitioner and publish in the **Federal Register** notice of and the reasons for such denial.

(b) *Civil judicial penalties.*

(1) *Generally.* Any person who violates this subpart shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

(2) *Limitation.* A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) of this section for the violation.

(c) *Determination of amount.* In determining the amount of a civil penalty under paragraphs (a) or (b) of this section, the court or the Secretary or his delegatee shall consider the seriousness of the violation, any history of such violations, any good-faith efforts to comply with applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

(d) *Criminal penalties.*

(1) *Negligent violations.* Any person who negligently violates this subpart commits a Class A misdemeanor.

(2) *Knowing violations.* Any person who knowingly violates this subpart commits a Class D felony.

(3) *False statements.* Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this subpart, or who falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this subpart commits a Class D felony.

(e) *Awards.*

(1) The Secretary or his delegatee or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected to any individual who furnished information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or

any Federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this paragraph.

(2) The Secretary, his delegatee, or a court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or any Federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a Federally recognized Tribe and an individual under paragraph (e)(1) of this section be eligible for an award, the Secretary, his delegatee, or the court, as the case may be, shall divide the amount equitably.

(f) *Liability in rem.* A cruise vessel operated in violation of this subpart is liable in rem for any fine imposed under paragraph (c) of this section or for any civil penalty imposed under paragraphs (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the cruise vessel may be found.

Dated: July 5, 2001.

T.J. Barrett,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu 01-051]

RIN 2115-AA97

Safety Zone; Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, HI

AGENCY: U.S. Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a temporary safety zone around position 21°-04.8' N, 157°-49.5' W, south of Oahu, Hawaii. This zone will extend from the surface of the ocean to the bottom. This zone is needed to protect mariners from the hazards associated with preparation of the Japanese Fisheries High School Training Vessel EHIME MARU for relocation. This vessel sank after being

struck by the submarine USS GREENEVILLE (SSN 772). Entry into this zone is prohibited unless authorized by the Captain of the Port Honolulu, HI.

DATES: This rule is effective from 7 a.m. HST July 14, 2001, until 4 p.m. August 1, 2001.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Boulevard, Honolulu, HI, 96813, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Mark Willis, U.S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522-8260.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying this action's effective date would be contrary to the public interest since immediate action is needed to protect the vessels and mariners from the hazards associated with preparation of the Japanese Fisheries High School Training Vessel EHIME MARU for relocation. Details were not available 30 days prior to the event, thus, there was insufficient time to publish a proposed rule in advance of the event or to provide a delayed effective date. Under these circumstances, following normal rulemaking procedures would be impracticable.

Background and Purpose

On February 9, 2001, the Japanese Fisheries High School Training Vessel EHIME MARU was struck by the submarine USS GREENEVILLE (SSN 772) approximately 9 nautical miles south of Diamond Head on the island of Oahu, Hawaii. The EHIME MARU sank in approximately 2,000 feet of water. At the time of the sinking, 26 of the 35 crewmembers were successfully rescued. An extensive search failed to locate additional personnel and it is assumed that some, or all, of the nine missing crewmembers were trapped

inside the vessel. The EHIME MARU is resting upright on the seafloor at position 21°-04.8' N, 157°-49.5' W. The U.S. Navy plans to prepare the EHIME MARU for transportation to shallow water by removing all booms, antennas, or other attached equipment that may interfere with this evolution. To protect vessels and mariners from the hazards associated with preparatory operations, the U.S. Coast Guard has established a temporary safety zone, with a radius of 1 nautical mile, centered on the vessels present location of 21°-04.8' N, 157°-49.5' W. This zone extends from the surface of the ocean to the bottom. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Honolulu, HI. The safety zone will be enforced by representatives of the Captain of the Port Honolulu. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The U.S. Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic area affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 U.S. Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zone and the short duration.

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).

Federalism

The U.S. Coast Guard has analyzed this rule under Executive Order 13132, and has determined this rule does not have implications for federalism under that Order.

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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

Taking of Private Property

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

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.

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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The U.S. Coast Guard considered the environmental impact of this action and

concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. From 7 a.m., July 14, 2001, to 4 p.m., August 1, 2001, a new § 165.T14-051 is temporarily added to read as follows:

§ 165.T14-051 Safety Zone: Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, Hawaii.

(a) *Location.* The following area is a safety zone: At the current location of the Japanese Fisheries High School Training Vessel EHIME MARU, all waters from the surface of the ocean to the bottom within a 1 nautical mile radius centered at 21°-04.8' N, 157°-49.5' W.

(b) *Designated Representative.* A designated representative of the U.S. Coast Guard Captain of the Port is any U.S. Coast Guard commissioned, warrant, or petty officer that has been authorized by the U.S. Coast Guard Captain of the Port, Honolulu, to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior U.S. Coast Guard boarding officer on each vessel enforcing the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these zones is prohibited unless authorized by the U.S. Coast Guard Captain of the Port or his designated representatives. The Captain of the Port Honolulu will grant general permissions to enter the zones via Broadcast Notice to Mariners.

(d) *Effective dates.* This section is effective from 7 a.m. July 14, 2001, until 4 p.m., August 1, 2001.

Dated: July 11, 2001.

G.J. Kanazawa,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Memphis 01-007]

RIN 2115-AA97

Safety Zone; Lower Mississippi River, LMR mile 531.3 to 537, Vaucluse Trenchfill

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Mississippi River from mile 531.3 to 537.0. This zone is needed to allow the Army Corps of Engineers' contractors to strengthen the integrity of the Vaucluse Trenchfill. Navigation within this zone will be prohibited from 6 a.m. to 6 p.m. (CDT) unless specifically authorized by the Captain of the Port Memphis.

DATES: This rule is effective from 6 a.m. (CDT) on June 11, 2001, through 6 p.m. (CDT) on September 2, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Memphis 01-007 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 200 Jefferson Ave., Memphis, TN 38103-2300, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: COTP Memphis representative, LT Brian Meier, at (901) 544-3941 ext. 226.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This type of construction project requires specific river conditions that are difficult to predict. Publishing

a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to ensure that the project can be completed under optimal conditions.

Reinforcement of the Vaucluse Trenchfill is also immediately needed to maintain the integrity of the right descending bank of the Mississippi River at the project site.

Background and Purpose

Due to bendway weir construction in the vicinity of the Vaucluse Trenchfill, LMR mile 533, the Coast Guard is establishing a safety zone for the Mississippi River from mile 531.3 to 537.0. Beginning on June 11, 2001, navigation will be closed every day from 6 a.m. to 6 p.m. (CDT) within the aforementioned zone. No vessels may enter or remain within this safety zone unless specifically authorized by the Captain of the Port Memphis. Vessels shall contact the M/V PATRICK on channel 13 or 16 for closure information and passing instructions. This safety zone will remain in effect until the construction project is completed. The contract construction time is approximately 83 days. This zone is needed to allow the Army Corps of Engineers' contractors to strengthen the integrity of the Vaucluse Trenchfill.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The regulation will be in effect for a long period of time, but each day during night hours river traffic will be unrestricted, minimizing the impacts on routine navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.