

proposal will test new regulations that will require the bridge to open on two-hour intervals on the even hour from 6 a.m. to Midnight; except from 7 a.m. to 5 p.m., on the last consecutive Wednesday and Thursday in July, the draw need not be opened. At all other times, the draw need not open.

The Town Council has recommended this test regulation to reduce vehicular traffic congestion, to increase public safety on this small island as a result of the reduced number of drawbridge openings, and to extend the structural and operational integrity of the movable span.

Under this 90-day temporary deviation, effective from July 2, 2004 through September 29, 2004, the Route 175 Bridge across Chincoteague Channel shall open every two hours on the even hour from 6 a.m. to Midnight; except from 7 a.m. to 5 p.m., on the last consecutive Wednesday and Thursday in July, the draw need not be opened. At all other times, the draw need not open.

This deviation from the operating regulations is authorized under 33 CFR § 117.43.

Dated: June 21, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04-013]

RIN 1625-AA00

Safety Zone; Middle River, San Joaquin County, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Middle River, San Joaquin County due to ongoing repair operations to a break in the Upper Jones Tract Levee that resulted in the flooding of the Upper Jones Tract. The safety zone is located within the area bounded on the north by the Santa Fe Cut Canal, on the south by the entrance of the Woodward Cut Canal, on the east by the Upper Jones Tract, and on the west by the eastern edge of Woodward Island. This temporary safety zone is necessary to

ensure the safety of the personnel and vessels involved in response operations, as well as other personnel, vessels and property from the associated flooding hazards. Persons and vessels are prohibited from entering into or transiting through the safety zone, unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 12:30 p.m. (PDT) on June 12, 2004, until 5 p.m. (PDT) on July 12, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco Bay 04-013 and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Ensign John Bannon, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3082.

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. Due to the urgency in responding to the levee damage, the Coast Guard determined that drafting and publishing a NPRM would cause unnecessary delay in implementation of this rule and would act contrary to the public's interest in seeking continued response to this emergency situation.

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**. Given the urgency of the levee damage and the strong public interest served in immediate response and repair of the levee, good cause exists in making the rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On June 3, 2004, the Coast Guard was notified that a section of the Upper Jones Tract Levee had collapsed in the vicinity of the Middle River in San Joaquin County, California. Coast Guard personnel from Station Rio Vista responded and observed an estimated 200-foot section of the levee destroyed and subsequent flooding of the agricultural land within the Upper Jones Tract. Initial response efforts included personnel from the Coast Guard, the California Department of Fish and

Game, and the San Joaquin County Sheriff. A temporary safety zone was established for one week to limit access to the waterway and assist with the safety of repair operations to the levee and restore it to a working condition.

On June 12, 2004 the San Joaquin County Sheriff Marine Patrol requested that the Coast Guard reestablish a safety zone in the vicinity of the Upper Jones Tract Levee break due to recreational vessel traffic disrupting repair operations. The previous safety zone expired on June 10, 2004. The Coast Guard has determined that a safety zone remains necessary and this temporary safety zone is established for a period of 30 days.

Discussion of Rule

This safety zone is necessary to protect the personnel involved in the response operations, and all other personnel, vessels and property from the associated river hazards resulting from the levee break. Entry into, transit through or anchoring within this safety zone is prohibited, unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel and San Joaquin County Sheriff Marine Patrol will enforce this safety zone and may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, will be punishable by civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Once the Coast Guard concludes that the safety zone is no longer required or response operations will involve a smaller area of the navigable waterway than is described by this safety zone, the Captain of the Port will announce the end of enforcement or reduction in size of this safety zone via broadcast notice to mariners.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 Homeland Security (DHS).

Despite restricting boating traffic within a portion of the Middle River, the effect of this regulation is not significant, as the waterway included within this area is not heavily transited and accessible only to small recreational and commercial boats.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 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. The safety zone may affect small entities such as the owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities as the area encompassed by the safety zone is not heavily transited and vessels engaged in recreational activities and sightseeing have alternative routes outside of the safety zone to engage in these activities. The maritime public will be advised of the safety zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any small business or organization may address further questions concerning the rule’s provisions, options for compliance, or in assistance in understanding this rule by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

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).

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

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.

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.

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 create an environmental risk to

health or risk to safety that may disproportionately affect children.

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing an emergency safety zone that will last for a short duration.

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 proposes to amend 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR

1.05–1(g), 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. Temporarily add § 165.T11–021 to read as follows:

§ 165.T11–021 Safety Zone: Middle River, San Joaquin County, California.

(a) *Location.* The navigable waters of the Middle River, located within the area bounded on the north by the Santa Fe Cut Canal, on the south by the entrance of the Woodward Cut Canal, on the east by the Upper Jones Tract, and on the west by the eastern edge of Woodward Island.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) Persons desiring to transit the area of a safety zone may contact the Captain of the Port at telephone number 415–399–3547 or his designated representative on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* U.S. Coast Guard personnel and San Joaquin County Sheriff personnel will enforce this safety zone and may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representatives. Upon being hailed by enforcement personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective period.* This safety zone is effective from 12:30 p.m. (PDT) on June 12, 2004, until 5 p.m. (PDT) on July 12, 2004.

Dated: June 12, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 04–14563 Filed 6–25–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–105]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Bogue Sound, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Marine Corps Base Camp Lejeune, NC. Naval gunfire will be conducted crossing the AIWW from offshore in the vicinity of the N–1/BT3 impact area and impacting areas in Camp Lejeune. This safety zone is needed to ensure the safety of persons and vessels operating on the AIWW in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

DATES: This rule is effective from 8 a.m. on June 07, 2004, until 8 a.m. on July 16, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–105 and are available for inspection or copying at Coast Guard Marine Safety Office Wilmington, 721 Medical Center Drive, Wilmington, NC 28401 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Charles A. Roskam II, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2200 or toll free (877) 229–0770.

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) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication are not required for this regulation.

Additionally, publishing an NPRM and delaying the effective date of this

rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public and required to ensure the safety of persons and vessels operating on the AIWW in the specified area at the specified times when the naval gunfire will be conducted crossing the AIWW.

Background and Purpose

Naval gunfire operations will be conducted crossing the AIWW from offshore on the Atlantic Ocean in the vicinity of the N–1/BT3 impact area and impacting areas in Camp Lejeune from 8 a.m. on June 04, 2004, until 8 a.m. on July 16, 2004. This safety zone will be in effect to ensure the safety of persons and vessels operating on the AIWW in this area.

Discussion of Rule

The safety zone will cover all waters of the AIWW, from bank to bank, extending from Bogue Sound-New River Daybeacon 58 (LLNR 39210) southeast to Bogue Sound-New River Light 64 (LLNR 39230) during periods of naval gunfire operations. Projectiles from the gunfire operations will travel across the AIWW to the impact area on Camp Lejeune. This safety zone will be in effect to ensure the safety of persons and vessels operating on the AIWW in this area. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard or U.S. Navy vessel will patrol each end of the safety zone to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 Homeland Security (DHS). This rule only affects a small portion, less than two miles, of the AIWW in North Carolina for a limited time. The proposed regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a