

## Discussion of Rule

At present, sections 33 CFR 164.11 entitled "Navigation under way; General", 33 CFR 164.30 entitled "Charts, Publications, and Equipment, General", and 33 CFR 164.33 entitled "Charts and Publications" require that all vessels have printed marine charts that are published by National Ocean Service, the U.S. Army Corps of Engineers, or a river authority, and plot each fix on those charts. The charts must be currently corrected at a large enough scale, and have enough detail to make safe navigation of the area possible. This proposed rule would amend the "Applicability" section (33 CFR 164.01) to offer an alternative to certain U.S. public vessels from the printed nautical charts and publications requirement. The alternative means of compliance would only apply to vessels using an electronic charting and navigation system, which is approved by the Federal agency exercising operational control of the vessel.

## Regulatory Evaluation

This direct final 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 rule has not been reviewed by the Office of Management and Budget under this 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 under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This direct final rule would exclude public vessels from certain requirements for paper navigational charts and publications that are found in 33 CFR Part 164 (Sections 164.11, 164.30, and 164.33). Agencies will be allowed the flexibility of using either electronic charts or the currently required paper charts. Consequently, this rule would not impose any mandatory costs on the agencies it involves.

This direct final rule would apply to warships and other vessels owned or operated by the United States Government and used only in government noncommercial service when equipped with an approved electronic system.

The Coast Guard does not expect using electronic charts and navigation systems in place of paper charts to adversely impact maritime safety.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have a significant economic impact on a substantial number of small entities.

"Small entities" include 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 expects that this rule would have a minimal economic impact on small entities. The Coast Guard does not believe that vessels affected by this rule are owned or operated by small entities, but by the federal government. In addition, the acceptable paper charts currently authorized are not printed or produced by small entities. Therefore, the Coast Guard believes that few, if any, small entities would be affected either directly or indirectly by this rule.

Therefore, 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. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

## Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132, and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This rulemaking only applies to Federal Government owned or operated public vessels. Therefore, since States may not regulate such vessels, a Federal Assessment is unnecessary.

## Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(d) of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. The Coast Guard believes this rule would have no significant effect on the environment or any effect on regulations involving the environment. The Coast Guard does recognize this rule may even have a positive effect on the environment by minimizing the risk of

environmental harm resulting from vessel groundings. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 164

Marine safety, Navigation.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 164 as follows:

## PART 164—NAVIGATION SAFETY REGULATIONS

1. The Authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.01, revise paragraph (a), and add paragraph (c) to read as follows:

### § 164.01 Applicability.

(a) This part (except as specifically limited by this section) applies to each self-propelled vessel of 1600 or more gross tons (except as provided in paragraph (c) of this section, or for foreign vessels described in § 164.02) when it is operating in the navigable waters of the United States except the St. Lawrence Seaway.

(b) \* \* \*

(c) Provisions of §§ 164.11(a)(2) and (c), 164.30, and 164.33 do not apply to warships or other vessels owned, leased, or operated by the United States Government and used only in government noncommercial service when these vessels are equipped with electronic navigation systems that have met the applicable agency regulations regarding navigation safety.

Dated: January 19, 2001.

### R.C. North,

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[COTP San Diego 01-006]

RIN 2115-AA97

### Security Zone; San Diego Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone

in the navigable waters of San Diego Bay, San Diego, CA. There were previously only two aircraft carriers home-ported at Naval Air Station North Island; however, a third aircraft carrier has been designated to homeport at Naval Air Station North Island. The establishment of this temporary security zone is needed to ensure the physical protection of this third aircraft carrier at Naval Air Station North Island.

**DATES:** This temporary regulation is effective May 2, 2001 through October 29, 2001.

**ADDRESSES:** Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101-1064, (619) 683-6495.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Kathleen Garza, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683-6495.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

A supplemental notice of proposed rulemaking (SNPRM) for a permanent rulemaking of this regulation is in process. However, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this regulation effective immediately. Publishing a NPRM and delaying the effective date would be contrary to the interest of national security. Due to the recent terrorist attack on a U.S. Navy vessel, the Navy has a heightened level of concern with regards to all its vessels and their crews. As a result, the Navy has determined a need for increased security measures for their vessels and crewmembers while berthed at U.S. Naval Air Station North Island. To accomplish this goal, a temporary security zone is needed to protect vessels while they are berthed at U.S. Naval Air Station North Island. Due to the need to protect these vessels and their crews, delaying the effective date would be contrary to national security. At the same time, we are inviting public comments on the security zone via the publication of a SNPRM. This temporary regulation will be removed once comments on the SNPRM are analyzed and a Final Rule is published.

##### **Background and Purpose**

The Coast Guard is establishing the temporary security zone, to accommodate the home-portioning of a new aircraft carrier at Naval Air Station North Island. There were previously only two aircraft carriers home-ported at Naval Air Station North Island; however, a third aircraft carrier has been designated to homeport at Naval Air Station North Island.

The establishment of this temporary security zone is needed to accommodate the home-portioning of this third aircraft carrier. The modification and expansion of this security zone will prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Air Station, North Island, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The establishment of this temporary security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than \$250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

##### **Regulatory Evaluation**

This temporary regulation 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 regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1105.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this proposal would

have significant 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 temporary rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

##### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process.

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 temporary regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

##### **Federalism**

The Coast Guard has analyzed this temporary regulation under Executive Order 13132 and determined that 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) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

### Taking of Private Property

This rule would 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 the 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.

### 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.

### Environment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that, under Figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in ADDRESSES.

### List of Subjects in 33 CFR Part 165

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

### Regulation

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

1. The authority citation for 33 CFR 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, and 160.5; 49 CFR 1.46.

2. A new section 165.T11-038 is added to read as follows:

#### § 165.T11-038 Security Zone: San Diego Bay, CA.

(a) Location. The following area is a security zone: on the waters along the northern shoreline of Naval Air Station North Island, the area enclosed by the following points: Beginning at 32°42'53.0" N, 117°11'45.0" W (Point A); thence running northerly to 32°42'55.5" N, 117°11'45.0" W (Point B); thence running easterly to 32°42'55.5" N, 117°11'30.5" W (Point C); thence running southeasterly to 32°42'40.0" N, 117°11'06.5" W (Point D); thence running southerly to 32°42'37.5" N, 117°11'07.0" W (Point E); thence running southerly to 32°42'28.5" N, 117°11'11.0" W (Point F); thence running southeasterly to 32°42'22.0" N, 117°10'48.0" W (Point G); thence running southerly to 32°42'13.0" N, 117°10'51.0" W (Point H); thence running generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning.

(b) Effective Dates. This temporary regulation is effective May 2, 2001 through October 29, 2001.

(c) Regulations. In accordance with the general regulations in section 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: April 6, 2001.

#### S.P. Metruck,

*Commander, U.S. Coast Guard Captain of the Port, San Diego.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 01-007]

RIN 2115-AA97

#### Security Zone; San Diego Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone around the Naval Amphibious Base,

Coronado, California, at the request of the U.S. Navy. This security zone will be established inside an already existing restricted area defined by the U.S. Navy maintained buoys. The establishment of this security zone is needed to ensure the physical protection of naval vessels and its activities at Naval Base, Coronado.

**DATES:** This temporary regulation is effective May 2, 2001 through October 29, 2001.

**ADDRESSES:** U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA 92101-1064, (619) 683-6495.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Kathleen Garza, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683-6495.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

A notice of proposed rulemaking (NPRM) for a permanent rulemaking of this regulation will be published soon. However, under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for making this temporary regulation effective immediately. Publishing a NPRM and delaying the effective date would be contrary to the interest of national security. Due to the recent terrorist attack on a U.S. Navy vessel, the Navy has a heightened level of concern with regards to all its vessels and their crews. As a result, the Navy has determined a need for increased security measures for their vessels and crewmembers while berthed at Naval Amphibious Base Coronado, Coronado, CA. To accomplish this goal, a temporary security zone is needed to protect vessels while they are berthed at Naval Amphibious Base, Coronado. Due to the need to protect these vessels and their crews, delaying the effective date would be contrary to national security. At the same time, we will invite public comment on the security zone via the publication of an NPRM. This temporary regulation will be removed once comments on the NPRM are analyzed and a Final Rule is published.

#### Background and Purpose

The Coast Guard is establishing a temporary security zone around the Naval Amphibious Base, Coronado, California, at the request of the U.S. Navy. The security zone will consist of the waters of San Diego Bay around the perimeter of the Naval Amphibious Base, extending approximately 100 yards out. Currently, there is a restricted area around the Naval Amphibious Base, which is located at 33 CFR section 334.860. The Navy believes that this