

effective October 4, 2001, until June 15, 2002, is extended in effect until September 30, 2002.

**§ 160.207 [Amended]**

5. Section 160.207, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, will continue to be suspended through September 30, 2002.

**§ 160.T208 [Amended]**

6. Section 160.T208, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, and amended by 66 FR 57877, November 19, 2001, and by 67 FR 2571, January 18, 2002, is extended in effect until September 30, 2002.

**§ 160.211 [Amended]**

7. Section 160.211, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, will continue to be suspended through September 30, 2002.

**§ 160.T212 [Amended]**

8. Section 160.T212, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, and amended by 66 FR 57877, November 19, 2001, is extended in effect until September 30, 2002.

**§ 160.213 [Amended]**

9. Section 160.213, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, will continue to be suspended through September 30, 2002.

**§ 160.T214 [Amended]**

10. Section 160.T214, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, and amended by 66 FR 57877, November 19, 2001, is extended in effect until September 30, 2002.

Dated: May 23, 2002.

**J.P. High,**

*Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD13-01-015]

RIN 2115-AA97

**Security Zones, Naval Submarine Base Bangor and Naval Submarines, Puget Sound and Strait of Juan De Fuca, WA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** In June 2001, we issued an interim rule establishing a fixed security zone around U.S. Naval Submarine Base Bangor. This interim rule also established moving security zones around U.S. Naval submarines while underway on Puget Sound, and the Strait of Juan De Fuca, WA and adjoining waters. This interim rule was established to safeguard U.S. Naval Submarine Base Bangor, and U.S. Naval submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security. Based on the issuance of a naval vessel protection rule and the actions of other agencies, the Coast Guard is removing this interim rule because it is no longer needed.

**DATES:** This rule is effective 11:59 p.m. PDT, June 20, 2002.

**ADDRESSES:** Coast Guard Marine Safety Office Puget Sound 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 U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT P. M. Stocklin, Jr., c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217-6232.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard issued an interim final rule, effective June 20, 2001, that was published in the **Federal Register** (66 FR 35758, July 9, 2001). We are removing that interim final rule.

Under 5 U.S.C. 553(d)(3), we find that good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**. This rule removes security zones that

are no longer needed because of other regulatory changes designed to provide adequate security for U.S. Naval Submarine Base Bangor and submarines.

**Background and Purpose**

The Coast Guard established a fixed security zone around Naval Submarine Base Bangor, WA, and moving security zones around Naval submarines while underway on Puget Sound, and the Strait of Juan De Fuca, WA and adjoining waters because we determined it was necessary to prevent access to these areas in order to safeguard this U.S. Naval base and submarines from sabotage, other subversive acts, or accidents, and otherwise protect U.S. Naval assets vital to national security. Events such as the bombing of the USS COLE highlight the fact that there were hostile entities operating with the intent to harm U.S. national security by attacking or sabotaging Naval assets including those in Puget Sound. The events of September 11, 2001, demonstrated that there were real, credible, and immediate threats.

The Coast Guard, through our interim final rule, assisted the U.S. Navy in protecting vital national security assets by establishing security zones to exclude persons and vessels from the immediate vicinity of U.S. Naval Submarine Base Bangor and submarines. Entry into these zones was prohibited unless authorized by the Captain of the Port or his designee. These security zones are patrolled and enforced by Coast Guard and Navy personnel.

These zones are not needed after June 20, 2002 because regulatory changes, designed to provide adequate security for U.S. Naval Submarine Base Bangor and submarines, will be in effect by June 20, 2002. In particular, the Protection of Naval Vessels rule issued under the authority in 14 U.S.C. 91 immediately following the September 11, 2001 attacks (66 FR 48780, September 21, 2001; and 66 FR 48782, September 21, 2001) will provide protective measures for both vessels and bases. Additionally, the Army Corps of Engineers will also be providing a Naval Restricted Area around Submarine Base, Bangor, Washington. As a result this interim rule is no longer needed, and the Coast Guard is withdrawing the interim rule and closing this rulemaking docket.

**Discussion of Comments and Changes**

The Coast Guard received 15 responses to the interim final rule. The paragraphs in this section discuss the comments we received and provide the

Coast Guard's response. The Coast Guard is not making any changes to the rule based on the comments. Instead, the interim final rule is being withdrawn because other protective measures make the rule unnecessary.

General comments are discussed first, followed by comments on specific sections of the regulations.

#### General Comments

Five comments expressed support for the expanding of the security zone around the Naval Subase Bangor and the mobile security zones around submarines in order to protect them from sabotage, other subversive acts, or accidents. In addition, these responses contained issues that were outside the scope of this regulation.

One comment in favor of the security zone also stated that just because there is not a specific threat we should still act as prudent military commanders and extend security zones despite what intelligence agencies know but cannot share with the public in detail.

Two comments stated that, due to recent terrorist attacks on the United States military, we as a country should ensure the safety of the military.

One comment from a boater agreed with the security zone and stated that the security zone in no way will hinder navigation in the Puget Sound area.

One commenter in support of the security zone stated that, because he was a taxpayer, the submarines belonged to him and that the Coast Guard and Navy should use all appropriate means to protect them from enemy attack.

Four comments opposed the expedited implementation of this regulation and requested public hearings. Some of these expressed concern that the public was not allowed to ask questions and voice their concerns on the expanding of the security zone. In light of the threat and vulnerability concerns for naval installations and vessels, as highlighted by the terrorist attack on the USS Cole, the Navy and Coast Guard decided that a security zone around the subase and submarines was needed immediately. Following the terrorist attack on the World Trade Centers in New York and the Pentagon in Washington, D.C., the security zones have proven to be an appropriate necessity.

Three comments suggested that the security zones would hinder peaceful marine protesting of the nuclear submarines and the submarine base. This rule does not prevent people from engaging in constitutionally-protected expression. People are still able to peacefully protest outside the security

zones. The zones are designed to protect Navy assets to the maximum extent possible without unreasonably impacting the right to free speech.

One comment mentioned that protection of civilian marine traffic during a terrorist attack on a submarine is not addressed in the interim final ruling. This comment is outside the scope of this rulemaking.

Four comments suggested other ways the Navy could increase security for its submarines and the subase. These suggestions were not practical due to the inherent dangers involved in submarine navigation and/or would create added unnecessary burdens.

Two comments expressed concern over automobile traffic being impeded on the Hood Canal Bridge. These comments are outside the scope of this regulation.

Three comments questioned what and whether there is a credible threat to U.S. submarines. It would be contrary to the public interest to disclose the exact nature of the threats to U.S. Naval assets, as this information is highly classified, and if divulged would greatly damage U.S. intelligence sources and security postures. The terrorist attacks of September 11, 2001 have proven that there are very credible threats to our nation and its capability to conduct war.

One comment questioned if a bomb threat on one of the submarines in May 2000 was one of the reasons for the security zone. This comment is out of the scope of this regulation.

One comment questioned if a November 2000 arrest for sabotage of a Navy Petty Officer assigned to a submarine was one of the reasons for the security zone. This comment is out of the scope of this regulation.

Three comments discussed protesters being unable to enter Elliot Bay while a nuclear submarine was moored there in August 2000 for Sea Fair festivities. These comments are out of the scope of this regulation.

One comment questioned if there is a similar security zone for Trident Submarines and the subase at Kings Bay, Georgia. That base has different geographical parameters than Puget Sound, and does not serve as a good comparison.

One comment suggested that the number of times a Trident Submarine passes through the Strait of Juan De Fuca and Hood Canal should be estimated in order to determine if the distances established by the zones will still permit adequate freedom of movement on the waterways. Due to the required secrecy of Trident submarine movements, the number of submarine passages cannot be made public.

One comment questioned if the Indian Tribal Governments had been contacted. The commenter stated it was not reasonable to expect Indian Tribes to review the **Federal Register** in order to comment on the impact to their tribes. The Coast Guard is required to consult Indian Tribes for rules that would have a significant impact on Tribal activities. The interim final rule did not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it did 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. As a result, the Indian Tribes were not consulted on the interim final rule.

One comment questioned why the environmental impact was left off the interim final ruling. The Coast Guard was not required to prepare environmental documentation prior to issuing the interim final rule, but has subsequently done so.

One comment suggested that the regulation would have an impact on commercial and civilian navigation. Since the interim regulation has been in affect, there has only been minimal impact on recreational and commercial navigation. This rule is being withdrawn so it will no longer have any impact on recreational or commercial navigation.

#### Comments on Specific Sections of the Rule

One comment questioned what response the Coast Guard or Navy would give to an infraction of the security zone. Specific Coast Guard enforcement actions depend on the circumstances of each case, and can, in accordance with policy, range from education and verbal warnings up to the maximum penalties provided by law. The Coast Guard and Navy will take all legally appropriate and necessary law enforcement measures to ensure compliance with the zone.

Four comments opposed the expedited implementation of this regulation and requested public hearings. Some of these expressed concern that the public was not allowed to ask questions and voice their concerns on the establishment of the security zones. The Coast Guard did not hold public hearings prior to the rulemaking because good cause existed to make the rule effective sooner than the normal rulemaking process would allow, as discussed in the interim final rule. The Coast Guard was also available

to answer any questions posed by the public.

### 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). We expect the economic impact of this final rule 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 fact that the regulated areas established by the interim final rule are being cancelled. For the above reason, the Coast Guard does not anticipate any significant economic impact.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would 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. This final rule will not affect any small entities. Because the impacts of this final rule are expected to be minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you believe it qualifies and how and to what degree this final rule would economically affect it.

### Assistance for Small Entities

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 so that they can better evaluate its effects on them and participate in the rulemaking. If the final 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.

### Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have 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 final rule would not impose an unfunded mandate.

### Taking of Private Property

This final rule would not effect a taking of private property or otherwise have taking implications under E.O. 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 final 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

We considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for security zones. A Categorical Exclusion Determination and an Environmental Analysis Checklist are available in the docket at the location specified under the **ADDRESSES** portion of this rulemaking.

### List of Subjects in 33 CFR Part 165

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

### Final Rule

For the reasons set out 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(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

#### § 165.1311 [Removed]

2. Remove § 165.1311.

Dated: May 20, 2002.

**M.R. Moore,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 02-13509 Filed 5-29-02; 8:45 am]

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### DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD01-02-002]

RIN 2115-AA97

### Safety and Security Zones; Pilgrim Nuclear Power Plant, Plymouth, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety and security zones around the Pilgrim Nuclear Power Plant in Cape Cod Bay, Plymouth, MA. The safety and security zones will close certain waters of Cape Cod Bay near the Pilgrim Nuclear Power Plant and land adjacent to those waters. The safety and security zones prohibit entry into or