

regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

**DATES:** Written comments must be submitted on or before November 25, 2002.

**ADDRESSES:** Send comments to U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Scott McLendon, Corps of Engineers, Wilmington District, Regulatory Division, at (910) 251-4725.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.435 which establishes a restricted area adjacent to Radio Island, between the Morehead City Channel and the Beaufort Channel, Beaufort, North Carolina. The public currently has unrestricted access to surrounding waters. To better protect vessels and personnel during loading and unloading operations, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

#### Procedural Requirements

##### A. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

##### B. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the

public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

##### C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

##### D. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

##### List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

#### PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.435 is added to read as follows:

##### § 334.435 Radio Island, Beaufort, North Carolina, Naval Restricted Area.

(a) *The area.* Beginning at a point at latitude 34°42'21" N., longitude 76°40'50.4" W.; thence southwesterly to latitude 34°42'20.4" N., longitude 76°40'53.4" W.; thence southeasterly to latitude 34°42'15" N., longitude 76°40'51.6" W.; thence southeasterly to latitude 34°42'13.6" N., longitude 76°40'49.4" W.; thence northeasterly to latitude 34°42'15.6" N., longitude 76°40'41.4" W.; thence northwesterly to latitude 34°42'22.8" N., longitude 76°40'44.4" W.; thence southwesterly to the point of beginning.

(b) *The regulation.* During those times when the U.S. Navy is conducting loading and unloading operations at the Radio Island Loading Ramp, no vessel or persons may enter the Restricted Area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: September 11, 2002.

**Michael G. Ensich,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### 33 CFR Part 334

#### United States Navy Restricted Area, Naval Air Station North Island, San Diego, CA

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Notice of Proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a new restricted area in waters adjacent to the Naval Air Station North Island (NASNI), San Diego, California. This amendment will restrict activities by the public on the northeast side of the base. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

**DATES:** Written comments must be submitted by November 25, 2002.

**ADDRESSES:** Send comments to U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC, at (202) 761-4618, or Mr. Russell L. Kaiser, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452-3293.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. V1) and chapter XIX, of the Army Appropriations Act of 1919

(40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by adding a restricted area at § 334.865. The proposed restricted area is being established for safety and security purposes in support of accommodating the homeport of a third aircraft carrier at NASNI. The proposed restricted area is adjacent to a current U.S. Coast Guard security zone, which is enclosed by latitude/longitude coordinates: 32°42'52.5" N, 117°11'45.0" W; 32°42'55.3" N, 117°11'45.0" W; 32°42'55.0" N, 117°11'30.5" W; 32°42'40.0" N, 117°11'06.5" W; 32°42'37.2" N, 117°11'06.8" W; 32°42'28.5" N, 117°11'11.0" W; 32°42'21.5" N, 117°10'47.7" W; and 32°42'13.1" N, 117°10'51.2" W. The proposed connection of the restricted area with the security zone would occur at the following coordinates: 32°42'55.0" N, 117°11'30.5" W and 32°42'40.0" N, 117°11'06.5" W.

#### Procedural Requirements

##### A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

##### B. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

##### C. Review Under the National Environmental Policy Act

The Los Angeles District is preparing an Environmental Assessment (EA) for this action. Although not expected at this time, based on the minor nature of the proposed additional restricted area regulations, an Environmental Impact Statement (EIS) would be prepared if determined appropriate. When the NEPA documentation is completed, it will be available for review at the Los Angeles District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

##### D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

#### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

#### PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.865 is added to read as follows:

##### § 334.865 Naval Air Station North Island, San Diego, California, Restricted Area.

(a) *The area.* The waters within an area beginning at 32°42'55.0" N, 117°11'30.5" W; thence running easterly to 32°42'57.0" N, 117°11'22.5" W; thence running easterly to 32°42'56.0" N, 117°11'19.0" W; thence running southeasterly to 32°42'49.0" N,

117°11'08.5" W; thence running southeasterly to 32°42'44.5" N, 117°11'06.5" W; thence running southerly to 32°42'40.0" N, 117°11'06.5" W.

(b) *The regulation.* (1) The restricted area shall not be open to swimming, fishing, water-skiing, mooring or anchorage.

(2) Dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(3) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(4) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(5) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Navy, U.S. Coast Guard, other authorized military components, or other vessels authorized by Commander, Navy Region Southwest, or his/her designee.

(6) When security conditions dictate, Naval security forces may impose strict enforcement of stand-off distances within the restricted area. This enforcement will not prevent utilization of navigable channels, but will serve to control its use in order to protect vital National interests.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region Southwest, and such agencies or persons as he/she may designate.

Dated: September 17, 2002.

**Michael G. Ensich,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

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