

welding or hotwork on a vessel when containerized dangerous cargo is located within the distances listed in paragraph (f) of this section.

(c) Before conducting welding or hotwork, flammable vapors, liquids, or solids must be completely removed from any container, pipe, or transfer line being worked on.

(d) Before conducting welding or hotwork on tanks, tanks used for storage of flammable or combustible substances must be tested and certified gas free.

(e) All welding and hotwork must be conducted according to NFPA 51B. (Incorporated by reference, see § 126.5.)

(f) Welding or hotwork is prohibited during gas freeing operations within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, within 30.5 meters (100 feet) of explosives, or within 15.25 meters (50 feet) of other hazardous materials.

(g) If the welding or hotwork is on the boundary of a compartment (*i.e.*, bulkhead, wall, or deck), a fire watch, in addition to that called for in NFPA 51B, must be stationed in the adjoining compartment.

(h) Personnel on fire watch must have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(i) All safety precautions in relation to purging, inerting, or venting for all hotwork on containers must be followed.

(j) All local laws and ordinances must be followed.

(k) If a fire or other hazard occurs, all cutting, welding, or other hotwork equipment must be shut down.

Dated: September 8, 2003.

**T.H. Gilmour,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 147

[CGD08-02-045]

RIN 1625-AG54 (Formerly RIN 2115-AG54)

#### Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Viasca Knoll 915 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this facility significantly reduces the threat of allisions, oil spills and releases of natural gas. This rule prevents all vessels from entering or remaining in the specified area around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

**DATES:** This final rule is effective October 27, 2003.

**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 [CGD08-02-045] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589-6271.

#### **SUPPLEMENTARY INFORMATION:**

#### **Regulatory History**

On February 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915" in the **Federal Register** (68 FR 9611). We received two comments on the proposed rule. No public hearing was requested, and none was held.

#### **Background and Purpose**

The Coast Guard is establishing a safety zone around Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll 915 (VK 915), located at position 29°06'27.46" N, 87°56'37.14" W.

The safety zone established by this rule is in the deepwater area of the Gulf of Mexico. For the purposes of this rule the deepwater area is considered to include waters of 304.8 meters (1,000 feet) or greater in depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and up to a distance of 200 nautical miles from the baseline. Vessels navigating in the area of the

safety zone consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. An extensive system of navigational fairways is within the deepwater area. The fairways include the Gulf of Mexico East-West Fairway, the entrance/exit route of the Mississippi River, and the Mobile Bay approaches. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Chas R. Haven & Assoc., Inc., hereafter referred to as Haven Group requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the tension leg platform, Marlin owned by B.P. Amoco.

The request for the safety zone was made due to the high level of shipping activity around the facility and the safety concerns for both the personnel on board the facility and the environment. The Haven Group indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event. The Marlin is a high production oil and gas drilling facility producing approximately 41,000 barrels of oil per day, 310 million cubic feet of gas per day and is manned with a crew of approximately 80 people.

The Coast Guard reviewed Group Haven's concerns and agreed that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This rule significantly reduces the threat of allisions, oil spills and natural gas releases and increases the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

#### **Discussion of Comments and Changes**

We received two comments on the proposed rule. One comment was received requesting that the owner of Marlin TLP, B.P. Amoco, be included in the rule.

The second comment expressed concerns over the Coast Guard establishing "security zones" around offshore platforms and the potential economic impact this type of zone may have on recreational and commercial fishing industries. Over the past several years the Coast Guard has established thirteen offshore safety zones in the Gulf of Mexico. Each zone, as well as this one, was requested in accordance with 33 CFR 147. The purpose of this offshore safety zone is clearly stated in

the "Background and Purpose" section of this rule. The purpose of offshore safety zones is also described in 33 CFR 147.1, which clearly states that they are "to promote the safety of life and property on the facilities, their appurtenances and attending vessels, and on the adjacent waters within the safety zones." The Coast Guard has not proposed an offshore security zone for the Marlin TLP or any other offshore facility.

Since the rule will allow vessels less than 100 feet not engaged in towing within the zone and any vessel may request permission from the Eighth Coast Guard District Commander to enter the zone, the Coast Guard has made no substantial changes to the provisions of the proposed rule.

#### 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).

The impacts on routine navigation are expected to be minimal because the safety zone does not encompass any nearby safety fairways.

#### 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 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. Few privately owned fishing vessels and recreational boats/yachts operate in the area of the Marlin TLP because it is located far offshore, and alternate routes are available for those that do. Use of alternate routes may cause a minimal loss of time (estimated loss of four to ten minutes) to their destination depending on how fast the vessel is traveling. The Coast Guard expects the impact of this rule on small entities to be minimal.

If you think 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 think it qualifies and how and to what degree this 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 offered to assist small entities in understanding the rule so they could 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 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 an 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 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 this rule is not expected to result in any significant environmental impact as described in

NEPA. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

#### PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.827 to read as follows:

#### § 147.827 Marlin Tension Leg Platform Safety Zone.

(a) *Description.* The Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll, Block 915 (VK 915), is located at position 29°6'27.46" N, 87°56'37.14" W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

- (1) An attending vessel;
- (2) A vessel under 100 feet in length overall not engaged in towing; or
- (3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: August 19, 2003.

**J.W. Stark,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard District Acting.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-002]

RIN 1625-AA00

#### Security Zones; San Francisco Bay, California

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is revising the enforcement period of moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) that enter, are

moored in, anchored in, or depart from the San Francisco Bay and Delta ports, California. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** The amendment to § 165.T11-077(f) in this rule is effective September 30, 2003. Section 165.T11-077, added at 68 FR 9006, February 27, 2003, and amended at 68 FR 32368, effective from 11:59 p.m. PST on February 10, 2003, to 11:59 p.m. PDT on September 30, 2003, as amended in this rule, is extended in effect to 11:59 p.m. PST on March 31, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03-002] 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:** Lieutenant Doug Ebbers, Waterways Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On February 27, 2003, we published a temporary final rule (TFR) for High Interest Vessels (HIVs) in San Francisco Bay and Delta ports entitled "Security Zones; San Francisco Bay, CA" in the **Federal Register** (68 FR 9003) under § 165.T11-077. It has been in effect since February 10, 2003. On May 30, 2003, we published a change in effective period in the **Federal Register** (68 FR 32368) that extended the effective period of the above temporary final rule (TFR) to September 30, 2003.

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. Additionally, 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**, for the following reasons. The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215,

September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02-07 (October 10, 2002). As a result, a heightened level of security has been established around all HIVs in San Francisco Bay and Delta ports. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to HIVs. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

The original temporary final rule was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in and near the San Francisco and Delta ports. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined that the need for continued security regulations exists. Therefore, delaying the effective date of this extension to the existing security zone would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of San Francisco Bay and Delta Ports areas would be jeopardized without the protection afforded by these security zones. The measures contemplated by this extension are intended to facilitate ongoing response efforts and prevent future terrorist attack. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all HIVs, their crews, the public and national security.

We plan to publish a notice of proposed rulemaking (NPRM) for a permanent HIV security zone. In that NPRM, we will propose to amend 33 CFR 165.1183, which was added by a final rule [COTP San Francisco Bay 02-019] published in the **Federal Register** (67 FR 79854) on December 31, 2002. 33