

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD13-02-016]

RIN 1625-AA00 [Formerly 2115-AA97]

**Regulated Navigation Area; Olympic View Resource Area EPA Superfund Cleanup Site, Commencement Bay, Tacoma WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final Rule.

**SUMMARY:** The Coast Guard is establishing a permanent regulated navigation area (RNA) on a portion of Commencement Bay, Tacoma, Washington. This RNA will preserve the integrity of a clean sediment cap placed over the contaminated seabed as part of the remediation process at the Olympic View Resource Area Environmental Protection Agency (USEPA) Superfund Site. It is being established at the request of the USEPA and the Washington State Department of Natural Resources and prohibits activities that would disturb the seabed, such as anchoring, dredging, spudding, laying cable, or other disturbances of the bottom. This rule will not affect transit or navigation of the area.

**DATE:** This rule is effective May 12, 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 CGD13-02-016 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST1 Craig R. Petersen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217-6232.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On December 2, 2002, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; Olympic View EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA, in the **Federal Register** (67 FR 71513). We received two phone calls commenting on the proposal. No public hearing was requested, and none held.

**Background and Purpose**

The Olympic View Resource Area Superfund Site is located between the eastern boundary of the Thea Foss Waterway and the western boundary of the Middle Waterway of Commencement Bay, Washington. The site includes property owned and or leased by the now closed Puget Sound Plywood Company, contaminated sediments in Commencement Bay, and other upland sources of contamination. The site is approximately 12.4 acres in size and includes 10.6 acres of intertidal and shallow subtidal marine aquatic land. An area of 2.2 acres of marine sediments is contaminated within the site.

Part of the remediation process for this site consists of covering the contaminated sediments with a layer of clean medium to coarse-grained sand approximately one-meter (3-feet) thick or greater. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

This Regulated Navigation Area (RNA) is a permanent regulation restricting activities such as anchoring, dredging, spudding, laying cable or other activities, which would disturb the sediment cap covering the contaminated seabed. The rule does not affect normal transit or navigation of the area. The Olympic View Resource Area is located offshore of the peninsula between the Thea Foss and Middle Waterways in Commencement Bay, Tacoma, Washington. The sediment cap includes approximately 480 feet of shoreline extending approximately 420 feet into the bay. This area is relatively unprotected and is rarely utilized as an anchorage.

**Discussion of Comments and Changes**

The Coast Guard received two phone calls commenting on the notice of proposed rulemaking (NPRM). The following paragraphs contain a discussion of comments received and an explanation of changes, if any, to the proposed regulations.

*Comment:* Two phone comments were received stating that the longitude on the last set of coordinates described in the NPRM as 47°15'46.74493" North, 122°26'09.27617" West appeared incorrect and did not make sense.

*Response:* These comments were investigated and found to be correct. The correct longitude on the last set of coordinates should be 122°26'02.50574" West. Accordingly, the last set of coordinates listed in paragraph (a) of the

final rule has been corrected and reads 47°15'46.74493" North, 122°26'02.50574" West. The size of the RNA did not appreciably change due to this correction.

**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 finding is based on the fact that the regulated area established by the rule would encompass a small area that should not impact commercial or recreational traffic. The Olympic View Resource Area does not appear to have any viable industrial or commercial use. Moreover, any land or water use on the site that would be at odds with the RNA would likely be restricted through the site's designation by the City of Tacoma as a Natural Resource Damage Assessment (NRDA) settlement site, pursuant to a Consent Decree between the City of Tacoma and the Natural Resource Trustees. Furthermore, on May 24, 2000, the State Commissioner of Public Lands established the project area as part of an environmental reserve under RCW 79.68.060. This designation removes the site from potential development or commercial leasing. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

**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. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The RNA will not have a significant economic impact due to its small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the

Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### 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 that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested by small entities.

Small business 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 would call 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 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 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.ID, 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. This particular regulated navigation area is established for the purpose of preserving the

remediation efforts at a USEPA Superfund Site. The rule itself will not cause nor introduce any environmental impacts and will be transparent in all regards except for prohibiting activities which could disturb the seabed within the established boundaries of the RNA. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under

#### ADDRESSES.

The USEPA has determined that there will be no significant environmental impact arising from the creation of this RNA designed to protect the sediment cap. The actual placement of the cap at the Olympic View Resource Area site was determined by the USEPA to provide an environmental benefit to the area by allowing organisms to colonize the clean sediments of the cap (“Action Memorandum for a Non-time-critical Removal Action at the Olympic View Resource Area within the Commencement Bay Nearshore/Tideflats Superfund Site, Tacoma, Pierce County, Washington”—July 16, 2001). The USEPA's authority to place the cap is expressed in this publicly available document, and additional information is available at the Marine Safety Office at the address under

#### ADDRESSES.

#### 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 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 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Section 165.1311 is added to read as follows:

#### § 165.1311 Olympic View Resource Area, Tacoma, WA.

(a) *Regulated area.* A regulated navigation area is established on that portion of Commencement Bay bounded by a line beginning at: 47°15'40.19753" N, 122°26'09.27617" W; thence to 47°15'42.21070" N, 122°26'10.65290" W; thence to 47°15'41.84696" N, 122°26'11.80062" W; thence to 47°15'45.57725" N, 122°26'14.35173" W; thence to 47°15'53.06020" N, 122°26'06.61366" W; thence to

47°15'46.74493" N, 122°26'02.50574" W; thence returning along the shoreline to the point of origin. [Datum NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the United States Environmental Protection Agency (USEPA) Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests shall be submitted in triplicate, to facilitate review by USEPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Olympic View Resource Area Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: March 27, 2003.

**Erroll Brown,**

*Rear Admiral, U.S. Coast Guard, 13th District Commander.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[COTP San Diego 03-014]

RIN 1625-AA00

**Security Zone; Waters Adjacent to San Onofre, San Diego County, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the waters adjacent to the San Onofre Nuclear Generating Station in San Diego

County, CA. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure. This security zone will prohibit all persons and vessels from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP), or his designated representative. This security zone will not affect recreational activities within the surf zone or the beach.

**DATES:** This rule is effective from 12:01 a.m. (PST) on March 21, 2003 to 11:59 p.m. (PDT) on May 21, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 03-014, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Sorrell, Marine Safety Office San Diego, at (619) 683-6495.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On February 6, 2002, we published a temporary final rule for waters adjacent to the San Onofre Nuclear Generating Station entitled "Security Zone; Waters adjacent to San Onofre, San Diego County, California" in the **Federal Register** (67 FR 5480) under Sec. 165.T11-048. It has been in effect since October 25, 2001 and was set to expire at 3:59 p.m. PDT on June 21, 2002. It has since been extended and is now set to expire at 11:59 p.m. PDT March 21, 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 a NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established concerning all vessels operating in the waters adjacent to the San Onofre Nuclear Generating Station area. This security zone is needed to protect the United States and more specifically the personnel and property of the San Onofre Nuclear Generating Station. The original TFR was urgently required to prevent possible terrorist

strikes against the United States and more specifically the people, waterways, and properties near the San Onofre Nuclear Generating Station. 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 the need for continued security regulations exists.

The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to San Onofre Nuclear Generating Station. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the San Onofre Nuclear Generating Station present possible platforms from which individuals may gain unauthorized access to this installation, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a temporary security zone in the navigable waters of the United States adjacent to the San Onofre Nuclear Generating Station. This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Onofre Nuclear Generating Station area.

As of today, the need for this security zone still exists. The effective period of this temporary final rule will extend through 11:59 p.m. PST March 21, 2003.

**Discussion of Rule**

This regulation extends the current security zone that prohibits all vessel traffic from entering, transiting or anchoring within a one nautical mile