

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2010–1091]

RIN 1625–AA00

Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone within the waters of Gravesend Bay, Brooklyn, New York. This safety zone is necessary to provide for the protection of the maritime public and safety of navigation from recently discovered underwater explosive hazards in Gravesend Bay. This action will restrict unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of Gravesend Bay until recently discovered military munitions are rendered safe and removed from the area. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) New York or the designated on-scene representative.

DATES: This rule is effective on June 30, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–1091 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–1091 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Eunice James, Coast Guard; telephone (718) 354–4163, e-mail Eunice.A.James@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On February 8, 2011, we published a notice of proposed rulemaking (NPRM) entitled “Safety Zone; Underwater

Hazard, Gravesend Bay, Brooklyn, NY” in the *Federal Register* (76 FR 6728). We received no comments on the proposed rule. A public meeting was not requested and none was held.

Basis and Purpose

In response to media reports of military munitions found in Gravesend Bay by civilian divers, U.S. Navy Explosive Ordnance Disposal divers from Naval Weapons Station Earle conducted underwater surveys and confirmed the location of munitions on the bottom of Gravesend Bay. The munitions consist of approximately 1500 rounds of 20mm ammunition, one 3-inch diameter projectile and two cartridge casings. The (COTP) New York has established a temporary safety zone under docket number USCG–2010–1126 as an interim measure while this long-term rulemaking process is pursued.

In the interest of public safety, the U.S. Navy has requested that the Coast Guard limit access to the location in Gravesend Bay where the munitions are located until the ordnance can be rendered safe and removed.

This safety zone is necessary to ensure the safety of mariners, vessels, and civilian divers from the potential hazards associated with unexploded military munitions.

Background

The COTP New York is establishing a safety zone around the location of an unexploded munitions site to ensure the safety of mariners and vessels transiting near the location of the ordnance as well as divers intending to dive in the area.

The safety zone encompasses all waters of Gravesend Bay within 110-yard radius of position 40°36’30” N, 074°02’14” W (NAD 83), approximately 70-yards southeast of the Verrazano Bridge Brooklyn tower.

Entry into the safety zone by any person or vessel will be prohibited unless specifically authorized by the COTP New York, or the designated on-scene representative. Persons desiring to enter the safety zone may request permission to enter from the Coast Guard COTP via VHF Channel 16 or by contacting the Sector New York Command Center at (718) 354–4353.

The Coast Guard advises that entry into, transiting, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring in this safety zone is prohibited unless authorized by the COTP New York or the designated on-scene representative.

The “designated on-scene representative” is any Coast Guard commissioned, warrant, or petty officer

who has been designated by the COTP New York to act on her behalf.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rulemaking. No changes were made to the final rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

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.

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.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending entering into, transiting through, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring in a portion of Gravesend Bay.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will limit access to a relatively small portion of the waterway. Vessel traffic can safely transit around the safety zone. Before the activation of the zone, we will issue maritime advisories widely available to users of the waterway in the vicinity of Gravesend Bay.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule will 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 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that 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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 (adjusted for inflation) 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 cause 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone to restrict unauthorized persons and vessels from entering into, transiting through, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring within a portion of Gravesend Bay until recently discovered military munitions are rendered safe and removed from the area.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.172 to read as follows:

§ 165.172 Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Gravesend Bay within a 110-yard radius

of a point in position 40°36'30" N, 074°02'14" W (NAD 83), approximately 70-yards southeast of the Verrazano Bridge Brooklyn tower.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) Entering into, transiting through, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) New York or the designated on-scene representative.

(3) The "designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP New York.

(4) Vessel operators desiring to enter or operate within the safety zone may contact the COTP New York or the designated representative at the Coast Guard Sector New York Command Center via VHF Channel 16 or by phone at (718) 354-4353 to request permission.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP New York or the on-scene representative.

Dated: May 11, 2011.

L.L. Fagan,

Captain, U.S. Coast Guard, Captain of the Port New York.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0391]

RIN 1625-AA00

Safety Zone; Ocean City Air Show, Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on the Atlantic Ocean in the vicinity of Ocean City, MD to support the Ocean City Air Show. This action is necessary to provide for the safety of life on navigable waters during the Ocean City Air Show. This action is intended to restrict vessel traffic movement on the Atlantic Ocean to protect mariners from the hazards associated with air show events.

DATES: This rule is effective from 10 a.m. on June 10, 2011, until 4 p.m. on June 12, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0391 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0391 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Michael DiPace, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757-668-5581, e-mail Michael.S.DiPace@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters.

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**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that on June 10, 11,

and 12, 2011, Ocean City, MD will host an air show event above the Atlantic Ocean between Talbot Street and 33rd Street in Ocean City, MD. In recent years, there have been unfortunate instances of jet and plane crashes during performances at air shows. Typical of jet or plane crashes, there is also a wide area of scattered debris that damages property and could cause significant injury or death. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard is establishing a temporary safety zone bound by the following coordinates: 38°21'38" N/075°04'04" W, 38°21'27" N/075°03'29" W, 38°19'35" N/075°04'19" W, 38°19'45" N/075°04'54" W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Ocean bound by the following coordinates: 38°21'38" N/075°04'04" W, 38°21'27" N/075°03'29" W, 38°19'35" N/075°04'19" W, 38°19'45" N/075°04'54" W (NAD 1983), in the vicinity of Talbot Street and 33rd Street in Ocean City, MD.

This safety zone is in the interest of public safety during the Ocean City Air Show and will be enforced from 10 a.m. until 4 p.m. on June 10, 2011, from 10 a.m. until 4 p.m. on June 11, 2011, and from 10 a.m. until 4 p.m. on June 12, 2011. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of