

*State Law Enforcement Officer* means any peace officer as defined in Alaska Statute § 01.10.060.

*Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except public vessels.

(b) *Location.* (1) *Regulated navigation area.* The following area is a regulated navigation area (RNA): All navigable waters of United States within the boundaries of the Coast Guard District 17 (Alaska).

(2) *Security zone.* A security zone is established around and under, and is centered on, each high capacity passenger (HCP) vessel within the RNA described in paragraph (b)(1) of this section, and extends 100 yards from the vessel while it is underway and 25 yards from the vessel while it is moored or anchored. A security zone enforced when a HCP vessel enters the RNA and remains enforced until the HCP vessel leaves the RNA. This is a moving security zone when the HCP vessel is in transit and a fixed zone when the HCP vessel is moored or anchored. A security zone will not extend beyond the boundary of the RNA in this section.

(c) *Regulations.* (1) Under 33 CFR 165.33, no person or vessel may enter into the security zones established under this section unless authorized by the Coast Guard District 17 Commander, the cognizant Captain of the Port, or the on-scene official patrol.

(2) When a HCP vessel in the RNA approaches within 100 yards of a vessel that is moored or anchored in a designated anchorage area, the stationary vessel must stay moored or anchored while it remains within the HCP vessel's security zone unless it is either ordered by or given permission from the Coast Guard District 17 Commander, the cognizant Captain of the Port, or the on-scene official patrol to do otherwise.

(3) The COTP will inform the public of the existence of security zone around and under HCP vessels in the RNA by Marine Safety Information Broadcasts.

(4) Vessels that seek to enter a security zone or exceed speed limits established in this section, may contact the on-scene official patrol (if there is one) or the cognizant COTP to request permission.

(5) A vessel in the RNA operating within 250 yards of a HCP vessel must proceed at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the navigation rules. All persons and vessels within 250 yards of a HCP vessel in the RNA must be attentive to and comply with the orders of the District

Commander, cognizant COTP, or designated on-scene official patrol.

(6) When conditions permit, the District Commander, cognizant COTP, or designated on-scene official patrol should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter the security zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Grant waiver of any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of security, safety, or environmental safety. Applications for waiver should be directed initially to the cognizant COTP. To be effective, all waivers must be granted in writing by the District Commander or cognizant COTP.

(d) *Contact information.* (1) Vessels seeking permission under paragraphs (c)(2), (c)(4), or (c)(6) of this section should contact the cognizant COTP or on-scene official patrol to make a timely request.

(2) The on-scene official patrol (if there is one) or the cognizant COTP or his or her designated representatives may be contacted by the following means:

(i) Channel 13 or 16, VHF-FM.

(ii) By telephone: Southeast Alaska (907) 957-0150; Prince William Sound (907) 835-7205; and Western Alaska (907) 271-6700.

(3) The District Command Center's 24-hour non-emergency telephone number is (907) 463-2001.

(e) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a HCP vessel, any Federal Law Enforcement Officer or State Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04-11. In addition, the District Commander, cognizant COTP, or on-scene official patrol may be assisted by other Federal, State or local agencies in enforcing this section.

(f) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: February 7, 2005.

**James C. Olson,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-05-010]

RIN 1625-AA00 and 1625-AA87

#### Safety and Security Zones; Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to remove three established safety/security zone regulations for Chesapeake Bay, Maryland, Captain of the Port Hampton Roads and Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries. The Commander of the Fifth Coast Guard District recently issued a District-wide security zone regulation for escorted vessels that will make these three previously established safety/security zone regulations unnecessary. This proposed rule would eliminate any duplication between the three established safety/security zone regulations and the recently established District-wide security zone regulation for escorted vessels.

**DATES:** Comments and related material must reach the Coast Guard on or before April 8, 2005.

**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 CGD05-05-010 and are available for inspection or copying at the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia, 23704 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant E.J. Terminella, Fifth Coast Guard District, at (757) 398-7783.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05-05-010],

indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate making the final rule effective less than 30 days after publication. This would be done pursuant to 5 U.S.C. 553 (d) which provides exceptions to the requirement not to make a rule effective less than 30 days after publication, including for rules, like this proposed one, that relieve restrictions.

#### Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia 23704 explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

In 2003 and 2004, the Coast Guard promulgated three safety/security zones regulations found at 33 CFR 165.500, 33 CFR 165.503 and 33 CFR 165.511. The first rule is entitled "Safety/Security Zones; Chesapeake Bay, Maryland", was published in the **Federal Register** (68 FR 43311) on July 22, 2003, and is also found at 33 CFR 165.500. That final rule established moving safety and security zones 500 yards around all cruise ships and vessels transporting CDC, LNG or LPG while transiting or moored in the COTP Baltimore zone.

The second rule entitled "Security Zone; Captain of the Port Hampton Roads," was published in the **Federal Register** (69 FR 40769) on July 7, 2004, and is also found at 33 CFR 165.503. That final rule established moving safety and security zones 500 yards around all passenger vessels or vessels carrying a CDC within the Captain of the Port Hampton Roads zone. Section 165.503 requires vessels to travel at the minimum speed necessary to navigate safely within the outer 400 yards of the zone, and not to enter the inner 100 yards of the zone without permission of the COTP.

The third rule entitled "Security Zone; Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay,

Delaware River and its tributaries" was published in the **Federal Register** (69 FR 56697) on September 22, 2004, and is also found at 33 CFR 165.511. That final rule established moving safety and security zones in a 500-yard radius around escorted passenger vessels in the Captain of the Port, Philadelphia zone as defined in 33 CFR 3.25-05. Section 165.511 requires vessels to travel at the minimum speed necessary to navigate safely within the outer 400 yards of the zone, and not to enter the inner 100 yards of the zone without permission of the COTP.

On February 28, 2005, the Commander, Fifth Coast Guard District signed a final rule—which appears elsewhere in today's **Federal Register**, docket number CGD05-05-171—establishing moving security zones around all escorted vessels which is found at docket CGD05-05-171. This final rule will become effective April 13, 2005. That final rule applies to all escorted vessels transiting or moored in the waters of the Fifth Coast Guard District. That rule places a 500-yard security zone around all vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a local law enforcement agency during their transit through the Fifth Coast Guard District. Only vessels traveling at the minimum safe speed may transit in the 500-yard zone and no persons or vessels are allowed within 100 yards of any escorted vessel, without the permission of the District Commander, Captain of the Port or their designated representatives, while the vessel is within the Fifth Coast Guard District.

Once that final rule signed by the Commander, Fifth Coast Guard District, becomes effective on April 13, 2005, the safety/security zones for Chesapeake Bay, Maryland, Captain of the Port Hampton Roads and Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries will no longer be necessary. That final rule to be codified at 33 CFR 165.518 accomplishes the same security as the three zones this rule proposes to remove (33 CFR 165.500, 33 CFR 165.503 and 33 CFR 165.511) and maintains consistency throughout the Fifth Coast Guard District.

#### Discussion of Proposed Rule

This proposed rule would amend 33 CFR part 165 by removing the security zones regulations currently found at 33 CFR 165.500, 33 CFR 165.503 and 33 CFR 165.511. The removal of these three regulations, combined with the final rule "Security Zone; Fifth Coast Guard District" published elsewhere in today's **Federal Register**, will provide

consistent enforcement of moving security zones around all escorted vessels during their entire transit through the Fifth Coast Guard District. This will prevent confusion for mariners and vessels transiting across the various Captain of the Port zones located in the Fifth Coast Guard District.

#### Regulatory Evaluation

This proposed 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary as this proposed rule removes a portion of a regulation that is no longer necessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would 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 (Pub. L. 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Jay Michalczak, Waterway Management Section, Marine Safety Office Corpus Christi, at (361) 888-3162, Ext 313. 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 proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A proposed 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 proposed 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule will not affect 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it would 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 proposed 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 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 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 because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

### 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 proposes to amend 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

#### § 165.500 [Removed]

2. Remove § 165.500.

#### § 165.503 [Removed]

3. Remove § 165.503.

#### 165.511 [Removed]

4. Remove § 165.511.

Dated: February 28, 2005.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 050228048–5048–01; I.D. 021705A]

RIN 0648–AS19

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Rebuilding Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues proposed regulations to implement Amendment 23 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 23)