



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii;
Danger Zone.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations to establish a new danger zone in waters of the Pacific Ocean off the Kekaha Range Facility, Barking Sands, Island of Kauai, Hawaii. The proposed amendment is necessary for the Hawaii Army National Guard to continue small arms training operations at the Kekaha Range Facility and to protect the public from potentially hazardous conditions which may exist as a result of that use. The proposed amendment would prohibit, on an intermittent basis, vessels from entering a six mile wide section of the Pacific Ocean that narrows to a 0.7 mile wide section along the shoreline fronting the Kekaha Range Facility without first obtaining permission from the Commanding Officer of Kekaha Range Facility.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2013-0004, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil . Include the docket number COE-2013-0004, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2013-0004. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Mr. Farley Watanabe, Corps of Engineers, Honolulu District, Regulatory Branch, at 808-835-4305 or by e-mail at farley.k.watanabe@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to establish a new danger zone in waters of the Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii.

The Corps authority to establish this danger zone is 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).

Background

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 of Engineers is proposing to amend the regulations at

33 CFR Part 334 to establish a new danger zone in the waters of the Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii.

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.

This proposed 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). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the establishment of this danger zone would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District

office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 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. Add § 334.1395 to read as follows:

§ 334.1395 Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) The danger zone. All waters within the area bounded by a line connecting the following coordinates: beginning at a point on the shore at latitude 21°58'45" N, longitude 159°45'32" W; thence easterly along the shoreline (shoreline is defined as the mean high water line and is coterminous with the federal property line) to a point at latitude 21°58'33" N, longitude 159°44'57" W; thence southeasterly to a point at latitude

21°55'39" N, longitude 159°43'36" W; thence northwesterly to a point at latitude 21°57'50" N, longitude 159°48'54" W; thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) The regulations. (1) Weapons firing at the Kekaha Range Facility (KRF) may occur at any time between 7 a.m. and 6 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the KRF Facility Manager, NGHI-OPS-TNG (G3) at 808-844-6731.

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at the KRF.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at the KRF.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is in progress. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is in progress, the boater

will be personally requested to expeditiously vacate the danger zone by KRF personnel hailing the vessel on VHF channel 16 or contacting the vessel directly by surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) The enforcing agency. The regulations shall be enforced by the Commanding Officer, Kekaha Range Facility, Hawaiian Area, Barking Sands, Kauai, Hawaii and such agencies or persons as he or she may designate.

Dated: May 3, 2013

Approved:

James R. Hannon
Chief, Operations and Regulatory
Directorate of Civil Works

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