



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-0080

RIN 1625-AA00

Regulated Navigation Area; Southern Oahu Tsunami Vessel Evacuation, Honolulu, HI

AGENCY: Coast Guard, DHS.

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent regulated navigation area (RNA) and to enforce this proposed regulation only when a tsunami warning is issued for the Hawaiian Islands by the Pacific Tsunami Warning Center. Tsunami warnings require the evacuation of a large number of vessels from their respective harbors. Following the evacuation, these vessels must remain offshore until the emergency situation has passed and the harbors have been deemed safe for reentry. Past tsunami warnings have created potentially dangerous offshore traffic congestion between commercial and recreational vessel traffic. Because of this, designated vessel traffic staging areas are necessary for a safe and orderly evacuation of Southern Oahu ports.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0080. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. The following link will take you directly to the docket:

<http://www.regulations.gov/#!docketDetail;D=USCG-2012-0080>. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 proposed rule, call or e-mail Lieutenant Commander Scott Whaley of the United States Coast Guard Sector Honolulu at 808-522-8264 ext. 3352 or Scott.O.Whaley@uscg.mil, respectively. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
SNPRM	Supplemental Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. To submit your comment online, go to <http://www.regulations.gov>,

type the docket number USCG-2012-0080 in the "SEARCH" box, and then click "SEARCH." Click on "Submit a Comment" on the line associated with this supplementary notice of proposed rulemaking (SNPRM).

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, inserting USCG-2012-0080 in the "SEARCH" box, and then click "SEARCH." You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received

into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain in detail why you believe a public meeting would be beneficial. If we determine that one would aid in solving this problem, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard collaborated with the Hawaii Ocean Safety Team, the Industry Advisory Board and other industry partners in the initial development of a proposed Southern Oahu Tsunami Vessel Evacuation regulated navigation area. All recommendations received careful consideration during the drafting of this rule. On May 14, 2013, the Coast Guard published a notice of proposed rulemaking (NPRM) in the *Federal Register* (78 FR 28170) under the same docket number (USCG-2012-0080) as this SNPRM. The Coast Guard received a total of five comments; those comments are posted, without change, at <http://www.regulations.gov>. To view these comments go to <http://www.regulations.gov>, insert USCG-2012-0080 in the

"SEARCH" box, and then click "SEARCH."

In accordance with 33 CFR 1.05-40, we are issuing this supplementary notice of proposed rulemaking (SNPRM) because, after consideration of the comments received, the Coast Guard proposes to substantially change the rule from that originally published in the NPRM. This SNPRM advises the public of the revised proposal and provides an opportunity for comment on the changes.

C. Basis and Purpose

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act. A regulated navigation area is a water area within a defined boundary for which regulations for vessels navigating within the area have been established to mitigate hazardous conditions deemed to exist in that area. The purpose of this rulemaking is to provide greater safety for vessels and maritime commerce in the event of a tsunami threat.

D. Discussion of Comments, Changes and the New Proposed Rule

The Coast Guard received a total of five written submissions on the NPRM published on May 14, 2013 in the Federal Register.

One commenter voiced his support of the rule proposed in the NPRM, calling it an "important safety regulation".

One commenter was unable to locate the graphic displaying

the staging areas. An electronic copy of the graphic was e-mailed to him. The graphic was also disseminated via press release, advertised on the local TV news and posted on the Coast Guard Sector Honolulu HOMEPORT web page. Further, the graphic associated with the NPRM was filed in the docket on June 5, 2013.

One commenter suggested changes to the proposed rule that would reduce the potential for small recreational vessels operating in the same staging area as large container vessels and cruise ships. In this SNPRM, the Coast Guard proposes to segregate the staging areas for recreational and commercial vessels. The potential for hazardous situations or even collisions, due to, among other things, limited maneuverability, would increase if recreational and commercial vessels were staged in the same area. Therefore, in this SNPRM the Coast Guard has modified the proposed staging areas to further reduce the potential for vessel intermingling, congestion and incidents. The current proposed rule adds a second recreational vessel staging area, eliminating the need for recreational vessels departing Keehi Lagoon to transit through the commercial vessel staging area.

One commenter suggested reconsideration of the potential path of commercial vessels and recreational vessels transiting from their berths to their respective staging areas. The staging areas have been modified so that commercial and recreational vessels can transit to their respective staging area without crossing each other's path.

One commenter pointed out a discrepancy with the stated geographical positions. The latitudes and longitudes have been changed to more accurately reflect the intended boundary for the regulated navigation zone.

E. Discussion of the Proposed Rule

Earthquakes off Chile and Japan in February 2010 and March 2011, respectively, resulted in tsunami threats to the Main Hawaiian Islands. These incidents emphasized the need to establish heightened safety measures, to ensure an orderly and organized evacuation plan, in order to protect the infrastructure of the southern coast of Oahu, Hawaii, including Honolulu Harbor. Honolulu Harbor has only one entrance for large commercial vessels and is the principle harbor of Hawaii's hub and spoke maritime commerce system. If, in response to a tsunami warning, a marine incident were to occur off the southern shore of Oahu, especially near the entrance of Honolulu Harbor, the results could be devastating to Hawaii's economy and the maritime commerce system and the constituencies that rely heavily upon the system's viability.

In response to this risk, the Coast Guard proposes the establishment of a regulated navigation area (RNA) designated as the Southern Oahu Tsunami Evacuation zone.

In the event of a tsunami warning, the Coast Guard Captain of the Port for Honolulu (COTP) would notify the public that an enforcement period is in effect for the duration of the

emergency for this RNA. At the conclusion of the threat, the COTP would notify the public when the RNA enforcement period is suspended or terminated.

During the enforcement period, the COTP intends to deploy Coast Guard vessels and personnel, if feasible, to ensure participating commercial and recreational vessels move to and stay within separate staging areas, and seaward of the 50-fathom curve that covers near-shore waters less than 300 feet deep. Coast Guard plans, which could vary depending on specific conditions during an actual emergency, call for those staging areas to be separated by an exclusionary area. This exclusionary area would measure 4 nautical miles long by one (1) nautical mile wide, centering lengthwise and along a line running seaward at 208 degrees southwest of the Honolulu Harbor Range light. Vessels participating in the staging area would have to stay outside of the exclusionary area.

There are two staging areas to the east of the exclusionary area: a commercial vessel staging area and a recreational vessel staging area. This eastern recreational staging area is intended for use by recreational vessels departing from and returning to the Ala Wai Small Boat harbor and Kewalo Basin. There will also be one recreational vessel staging area to the west of the exclusionary area. This staging area is intended for recreational vessels departing from and returning to the Keehi Lagoon area.

Although recreational vessels would be able to use either the east or west staging area, the mariners decision for which staging area to use should be based on which staging area is the easiest to transit to so as to avoid crossing the path of other vessels. The commercial staging area is intended for use by all commercial vessels departing from and returning to Kewalo Basin and Honolulu Harbor.

A graphic of the regulated navigation area is posted in the docket (<http://www.regulations.gov/#!docketDetail;D=USCG-2012-0080>) and also on the United States Coast Guard Sector Honolulu Homeport web page (<https://homeport.uscg.mil/mycg/portal/ep/portDirectory.do?tabId=1&cotpId=27>) under the Waterways Management tab. The graphic shows how we expect to separate commercial and recreational vessels when the RNA is being enforced, but under actual enforcement conditions local commanders may vary the plan as conditions warrant.

F. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, because it would have an effect on the regulated public only in the rare circumstances of a tsunami threat, while at other times vessels will be able to transit the area freely. Further, staging within this RNA is completely voluntary and vessels are free to evacuate outside of the RNA if they prefer. Therefore, it 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.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit and remain in the exclusionary zone during a tsunami threat, or owners or operators of vessels otherwise intending to operate in a fashion not compatible with this proposed rule. This rule would not have a significant impact on a substantial

number of small entities because the RNA would only be activated, and thus subject to enforcement, when a tsunami warning has been issued by the Pacific Tsunami Warning Center.

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.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

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.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. 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.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. 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 proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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.

9. 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.

10. Protection of Children from Environmental Health Risks

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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule, implementing an RNA for vessel staging areas in the event of a tsunami threat to the Main Hawaiian Islands, is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES, or you may obtain a copy by calling or e-mailing Lieutenant Commander Scott Whaley of the United States Coast Guard Sector Honolulu at 808-522-8264 ext. 3352 or Scott.O.Whaley@uscg.mil, respectively. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.14-1413 to read as follows:

§ 165.14-1413 Regulated navigation area; Southern Oahu Tsunami Evacuation; Honolulu, Hawaii.

(a) Location. The following area is a regulated navigation area (RNA): All waters of the Pacific Ocean south of the southern shoreline of Oahu, HI, extending from the surface of the water to the ocean floor, enclosed by a line connecting the following points: 21° 17' 14"N, 157° 55' 34"W; 21° 13' 30"N, 157° 55' 34"W; 21° 13' 30"N, 157° 48' 20"W; 21° 14' 14"N, 157° 48' 20"W, thence westward along the 50 fathom curve to the beginning point. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19357.

(b) Regulations. You may contact the Coast Guard on VHF Channel 16 (156.800 MHz) or at telephone number 808-842-2600, to obtain clarification on RNA transits and locations. Operations permitting, the Coast Guard patrol boats plan to enforce the RNA and provide on-scene direction. During the enforcement period persons and vessels wishing to remain inside the RNA must abide by the

following stipulations:

(1) No person or vessel may enter into an exclusionary area 4 nautical miles long by one (1) nautical mile wide, centered lengthwise and along a line running seaward at 208 degrees southwest of Honolulu Harbor Front Range Light, except to transit to or from the staging areas or other areas outside the zone. Loitering or lingering in the exclusionary zone is prohibited.

(2) The Western Recreational Vessel Staging area is bound by a line connecting the following points: 21° 17'14"N, 157° 55'34"W; 21° 14'36"N, 157° 55'34"W; 21° 16'31"N, 157° 53'54"W and then along the 50-fathom curve to the beginning point. This staging area is intended for recreational vessels departing from and returning to the Keehi Lagoon area.

(3) The Commercial Vessel Staging Area is bound by a line connecting the following points: 21° 16'09"N, 157° 52'59"W; 21° 13'30"N, 157° 55'34"W; 21° 13'30"N, 157° 51'39"W; 21° 15'22"N, 157° 51'10"W and then along the 50-fathom curve to the beginning point. This staging area is intended for use by all commercial vessels intended to remain in the RNA during a tsunami treat.

(4) The Eastern Recreational Vessel Staging Area is bound by the following points: 21° 15'22"N, 157° 51'10"W; 21° 13'30"N, 157° 51'39"W; 21° 13'30"N, 157° 48'20"W; 21° 14'14"N, 157° 48'20"W and then along the 50-fathom curve to the

beginning point. The Commercial Vessel Staging Area bounds this staging area's western edge. The dividing line between the Commercial Vessel Staging Area and the Eastern Recreational Vessel Staging Area can be determined visually. The private dayboards located in the Ala Wai Small Boat Harbor and the La Ronde Rotating Restaurant rooftop restaurant form a natural range that mariners can use in daylight hours to gauge the eastern boundary of the Commercial Vessel Staging Area and the western boundary of the Eastern Recreational Vessel Staging Area. This eastern recreational staging area is intended for use by recreational vessels departing from and returning to the Ala Wai Small Boat harbor and Kewalo Basin.

(5) Located between the Western Recreational Vessel Staging Area and the Commercial Vessel Staging Area is an Exclusion Area. This area is bound by the following points: 21° 16' 31"N, 157° 53' 54"W; 21° 14' 36"N, 157° 55' 35"W; 21° 13' 30"N, 157° 55' 34"W; 21° 13' 54"N, 157° 55' 08"W; 21° 16' 09"N, 157° 52' 59"W.

(6) All vessels staging in the RNA must be seaward of

the 50 fathom (300 foot) curve.

(c) Enforcement period. Paragraph (b) of this section will be enforced only when a tsunami warning has been issued for the Hawaiian Islands by the Pacific Tsunami Warning Center. The COTP will notify the public of any enforcement, suspension of enforcement, or termination of enforcement through appropriate means to ensure the widest publicity, including the use of broadcast notice to mariners, notices of implementation and press releases.

(d) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: September 3, 2013.

C. B. THOMAS,
Rear Admiral, U.S. Coast Guard,
Commander, Fourteenth Coast Guard District.

[FR Doc. 2013-24150 Filed 10/02/2013 at 8:45 am; Publication
Date: 10/03/2013]