



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0818]

RIN 1625-AA00

Safety Zone; Columbia River, Sand Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters of the Columbia River within a 500-yard radius of the small boat “Nessy,” while in the area of Sand Island, near Chinook, WA, and all involved associated vessels in support of the Double-Crested Cormorant removal operations conducted by the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River, or a designated representative.

DATES: This rule is effective from September 21, 2016 through October 21, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0818 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email msupdxwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services notified the Coast Guard that they intend to conduct federally permitted removal operations of the Double-Crested Cormorant starting September 21, 2016. In response, on August 23, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Columbia River, Sand Island, WA 81 FR 57507. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended September 12, 2016 we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because such delay would eliminate the safety zone’s effectiveness and usefulness in preventing dangers to the boating public associated with the removal operations being conducted using firearms and live ammunition.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. Coast Guard Captains of the Port are granted authority to establish safety zones in 33 CFR 1.05-1(f) for safety purposes as described in 33 CFR part 165.

The Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services will conduct a federally permitted removal operation of the Double-Crested Cormorant starting September 21, 2016. This operation will involve the use of firearms and live ammunition. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the removal operation will be a safety concern for anyone within a 500-yard radius of the small boat “Nessy,” while in the area encompassing these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W, and any associated support vessel(s). The safety zone is needed to protect personnel and vessels in the navigable waters within the safety zone during the removal operations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 23, 2016. There are two changes in the regulatory text of this rule from the proposed rule in the NPRM. The change in paragraph (a) of the regulation is non-substantive and clarifies the language that describes the area that is designated a safety zone. The change in paragraph (c) of the regulation updates the language regarding assistance from state law enforcement to align with the statute cited.

This rule establishes a safety zone from September 21, 2016, through October 21, 2016. The safety zone will cover all navigable waters of the Columbia River within 500 yards of the small boat “Nessy,” and all involved associated support vessels being used by personnel during

the removal operation, conducted in the area encompassed by these points: 46° 15' 45" N, 123° 59' 39" W; 46° 15' 24" N, 123° 59' 42" W; 46° 13' 32" N, 123° 57' 18" W; 46° 15' 9" N, 123° 55' 24" W; and 46° 15' 54" N, 123° 58' 6" W. The 500 yard radius area of the safety zone is intended to protect persons and vessels from the dangerous combined effects of live gunfire, unpredictable animal behavior, and a highly dynamic marine environment characterized by strong tides, river currents and wind. This safety zone will be enforced only when the small boat "Nessy," and all involved associated support vessels, are conducting the removal operations, which will be three days a week for four weeks. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River in the area encompassing these

points: 46° 15' 45" N, 123° 59' 39" W; 46° 15' 24" N, 123° 59' 42" W; 46° 13' 32" N, 123° 57' 18" W; 46° 15' 9" N, 123° 55' 24" W; and 46° 15' 54" N, 123° 58' 6" W. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 section.

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.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. 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.

F. 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(42 U.S.C. 4321-4370f), and have determined that 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 involves a safety zone lasting four weeks, for three days a week, that will prohibit entry within 500 yards of the small boat “Nessy” and all involved associated support vessels, while in the area encompassing these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W, while personnel are conducting the removal operations of the Double-Crested Cormorant. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. 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.

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: Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-0818 to read as follows:

§ 165.T13-0818 Safety Zone; Columbia River.

(a) *Location.* The following area is the safety zone: all navigable waters of the Columbia River within 500 yards of the small boat “Nessy,” and all involved associated support vessels, while in the area encompassing these points: 46° 15’ 45” N, 123° 59’ 39” W; 46° 15’ 24” N, 123° 59’ 42” W; 46° 13’ 32” N, 123° 57’ 18” W; 46° 15’ 9” N, 123° 55’ 24” W; and 46° 15’ 54” N, 123° 58’ 6” W.

(b) *Regulations.* In accordance with the general regulations in subpart C of this part, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. Where immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by members of the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services onboard the small boat “Nessy,” and other federal, state, or local agencies in enforcing this section.

(d) *Enforcement period.* This section is effective from September 21, 2016, through October 21, 2016. It will be enforced when the small boat “Nessy,” and all involved associated support vessels, are conducting the removal operations of the Double-Crested Cormorant. The small boat “Nessy” is described as a 20-foot black and gray aluminum work skiff with an overhead light arch. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.

Dated: September 16, 2016

D. F. BERLINER,
Captain, U.S. Coast Guard,
Acting Captain of the Port,
Sector Columbia River.

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