



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0310]

RIN 1625-AA00

Safety Zone: Vengeance Sunken Barge, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in support of the environmental and salvage response operation to the sunken barge Vengeance in the San Francisco Bay, east of Yerba Buena Island and north of the Oakland Outer Harbor Entrance Channel near Oakland, CA. All vessel traffic is prohibited from transiting the area to allow safe response operations to be conducted. All vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until July 31, 2017. For the purposes of enforcement, actual notice will be used from June 1, 2017 until [INSERT DATE OF PUBLICATION IN

THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2017-0310. To view these documents 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Marcia Medina, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7443 or e-mail at D11-PF-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

APA	Administrative Procedures Act
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NAD	North American Datum of 1983
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

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."

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing an NPRM would be impractical due to the emergent nature of the environmental and salvage response to be conducted on the barge Vengeance.

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**. The Coast Guard finds that it is impracticable to provide notice and receive comment due to the emergent nature of the environmental and salvage response to be conducted on the barge Vengeance.

III. Legal Authority and Need for Rule

The legal basis for the proposed rule is 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, which collectively authorize the Coast Guard to establish safety zones.

The sunken barge Vengeance creates a significant underwater hazard to navigation to vessels transiting the San Francisco Bay. The response operations are complex in nature and involve multiple vessels. These operations, when conducted in close

proximity to transiting vessels, create unpredictable hazards, hence necessitating a safety zone restricting all vessel traffic within this impacted area until environmental response operations are complete. This safety zone establishes a temporary restricted area on the navigable waters of the San Francisco Bay, east of Yerba Buena Island and north of Oakland Outer Harbor Entrance Channel within the following points: 37°48.549'N 122°20.891'W, 37°48.498'N 122°21.134'W, 37°48.346'N 122°21.068'W, and 37°48.461'N 122°20.782'W (NAD 83). This restricted area applies to all vessels transiting the specified area.

IV. Discussion of the Rule

The Coast Guard or a designated representative will enforce a safety zone in navigable waters of the San Francisco Bay, east of Yerba Buena Island and north of Oakland Outer Harbor Entrance Channel within the following points: 37°48.549'N 122°20.891'W, 37°48.498'N 122°21.134'W, 37°48.346'N 122°21.068'W, and 37°48.461'N 122°20.782'W (NAD 83).

This safety zone is effective from June 1, 2017 through on July 31, 2017 or as announced via Broadcast Notice to Mariners.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the sunken barge Vengeance until the environmental and salvage response operations are complete.

Except for persons or vessels authorized by the Captain of the Port or a designated representative, no vessel may enter or remain in the restricted area. These regulations are needed to keep vessels safely outside of the response zone until environmental and salvage response operations are complete.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order 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

E.O.s 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations

be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because it is outside of the Oakland Outer Harbor Entrance Channel and will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

B. 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time, (ii) vessel traffic can transit safely around the safety zone, and (iii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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 above.

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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have 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 of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration for categorically excluded actions is 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, 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-857 to read as follows:

§165.T11-857 Safety Zone; Vengeance Sunken Barge, San Francisco, CA.

(a) Location. This temporary safety zone is established in the navigable waters of San Francisco Bay, east of Yerba Buena Island and north of Oakland Outer Harbor Entrance Channel within the following points: 37°48.549'N 122°20.891'W, 37°48.498'N 122°21.134'W, 37°48.346'N 122°21.068'W, and 37°48.461'N 122°20.782'W (NAD 83).

(b) Enforcement period. The zone described in paragraph (a) of this section will be enforced from June 1, 2017 through July 31, 2017 or as announced via Broadcast Notice to Mariner. The Captain of the Port San Francisco (COTP) will notify the

maritime community of any changes to this enforcement period via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) Regulations. (1) Under the general regulations in

33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone through the 24-hour Command Center at telephone (415) 399-3547 or on VHF channel 16.

Dated: June 1, 2017

Anthony J. Ceraolo
Captain, U.S. Coast Guard
Captain of the Port San Francisco
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