



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0939]

RIN 1625-AA00

Safety Zone; Sector Key West COTP Zone Post Storm Recovery, Atlantic Ocean, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

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**SUMMARY:** The Coast Guard has established a temporary safety zone for certain waters within the Sector Key West Captain of the Port (COTP) Zone. Vessels are prohibited from entering into, anchoring, loitering, or movement within a safety zone around salvage or pollution removal vessels in the Florida Keys. These temporary regulations are necessary for the safety of persons, vessels, and property due to the large volume of debris, sunken vessels and salvage operations associated with Hurricane Irma. We invite your comments on this rulemaking.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 1, 2017. For the purposes of enforcement, actual notice will be used from October 5, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related materials must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0939 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 rulemaking, call or email Lieutenant Scott Ledee, Waterways Management Division Chief, Sector Key West, FL, U. S. Coast Guard; telephone (305) 292-8768, e-mail SKWWaterways@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
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary 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.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time remains to publish an NPRM and to receive public comments, as Hurricane Irma has already caused significant damage to vessels and property in the Sector Key West COTP Zone leaving underwater debris and sunken vessels around the Florida Keys. The safety zone is necessary to provide for the safety of persons,

vessels, and property from the hazards posed by sunken vessels and debris. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

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. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential hazards associated with hurricane debris.

The Coast Guard is soliciting public comments on this temporary interim rule. Although we need to make this interim rule effective starting October 5, 2017, we will consider public comments and may issue a temporary final rule that will supersede this interim rule based on comments received.

### **III. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **IV. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Key West has determined that potential hazards associated with salvage operations and hurricane debris will be a safety concern for persons, vessels, and property within the waters of the ports mentioned above. This rule is necessary to protect persons, vessels, and property on the navigable waters within the safety zone while cleanup efforts are underway.

#### **V. Discussion of the Rule**

Vessels are prohibited from entering into, anchoring, loitering, or movement within a safety zone around salvage or pollution removal vessels in the Florida Keys. These temporary regulations are necessary for the safety of persons, vessels, and property due to the large volume of debris, sunken vessels and salvage operations associated with Hurricane Irma.

The COTP Key West will continue to evaluate conditions in the waters in the vicinity of the Florida Keys and may stop enforcing this rule earlier if the conditions permit. The Coast Guard will provide notification of the safety zone to the local maritime community by Marine Safety Information Bulletins, Broadcast Notice to Mariners, and on-scene designated representatives.

#### **VI. 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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following reasons: the safety zone is of a small diameter around salvage and pollution recovery vessels and wreckage, and the Coast Guard will provide notice of the safety zones to the local maritime community by Marine Safety Information Bulletins, Broadcast Notice to Mariners, and designated on-scene representatives.

#### 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 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 VI.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 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.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 from which vessels are excluded. 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 supporting this determination is available in the docket where indicated under ADDRESSES.

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

2. Add § 165.T07–0939 to read as follows:

§ 165.T07-0939 Safety Zone; Sector Key West COTP Zone Post Storm Recovery, Atlantic Ocean, FL.

(a) Location. The following area is a safety zone: all waters within 100 yards of all salvage vessels and pollution recovery vessels operating within 1 nautical mile of land in the Captain of the Port (COTP) Key West.

(b) Definition. As used in this section, the term “designated representative” includes Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal,

state, and local officers designated by or assisting the COTP Key West in the enforcement of the safety zone.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the COTP Key West by telephone at (305) 292-8727, or a designated representative via VHF-FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(d) Enforcement period. This rule will be enforced from 5 p.m. on October 5, 2017 through 8 a.m. on December 1, 2017, unless sooner terminated by the COTP Key West.

Dated: October 5, 2017

Jeffrey A. Janszen,  
Captain, U.S. Coast Guard,  
Captain of the Port Key West.

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