



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2017-0982]**

**RIN 1625 - AA00**

### **Safety Zone; Mamala Bay, Oahu, HI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** On October 10, 2017, the commercial fishing vessel PACIFIC PARADISE ran aground approximately 400 yards southwest of Kaimana Beach, in the navigable waters of Mamala Bay, Oahu, Hawaii. The Coast Guard established a temporary safety zone extending 500 yards in all directions around the grounded vessel to facilitate vessel salvage operations. To date, the vessel remains aground. Accordingly, effective December 1, 2017, the Coast Guard hereby extends the temporary safety zone for an additional thirty days to facilitate ongoing salvage and subsequent removal operations. The extension of this temporary safety zone is necessary to protect personnel, vessels and the marine environmental from potential hazards associated with ongoing operations to salvage and remove a grounded vessel in this area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 8:00 a.m. on December 31, 2017. For the purposes of

enforcement, actual notice will be used from 8:00 a.m. on December 1, 2017 until [INSERT 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-2017-0982 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 Lieutenant Commander John Bannon, Waterways Management Division, U.S. Coast Guard Sector Honolulu at (808) 541-4359 or [john.e.bannon@uscg.mil](mailto:john.e.bannon@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary final rule
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On October 10, 2017, the commercial fishing vessel PACIFIC PARADISE ran aground approximately 400 yards southwest of Kaimana Beach, in the navigable waters of Mamala Bay, Oahu, Hawaii at position 21°15.69’N; 157°49.49’W. On October 11, 2017, the Coast Guard established a seven-day temporary safety zone encompassing all waters extending 500 yards in all directions around the grounded vessel to facilitate vessel salvage operations and protect personnel, vessels and the marine environment from the hazards associated with them. Due to the emergent nature of the grounding and subsequent removal operations, the temporary final rule (TFR) was not initially published in the **Federal Register**. On October 18, 2017, the temporary

safety zone was extended for two additional weeks to account for delays in salvage operations due to ocean and weather conditions. The extension of the temporary safety zone was published in the **Federal Register** (82 FR 49111) on October 24, 2017. On November 1, 2017, the safety zone was extended for one additional month to account for delays in salvage operations due to ocean and weather conditions. The safety zone extension was published in the **Federal Register** (82 FR 51767) on November 8, 2017. Ongoing challenges with the salvage efforts and weather necessitate a third extension of the temporary safety zone for an additional thirty days.

The temporary safety zone continues to encompass all waters extending 500 yards in all directions around the grounded fishing vessel located approximately 400 yards southwest of Kaimana Beach at position 21°15.69'N; 157°49.49'W. When the vessel is off the reef, the stationary safety zone will shift to a moving safety zone extending 500 yards in all directions around the vessel and continue until December 31, 2017 at 8:00 a.m. or until the removal operation is complete, whichever is earlier.

The Coast Guard is extending the existing temporary safety zone 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 the initial estimate to salvage the vessel from the grounding was estimated at one week or less. Immediate action remains needed to respond to the safety hazards associated with this fishing vessel salvage effort for an estimated additional thirty days. Therefore, publishing an NPRM is impracticable and contrary to public interest.

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**. For the same reasons stated in the preceding paragraph, delaying the effective period of this temporary safety zone would be impracticable and contrary to the public interest.

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

The Coast Guard is issuing this rule pursuant to 33 U.S.C. 1231. On October 10, 2017, the Coast Guard was informed the commercial fishing vessel PACIFIC PARADISE ran aground in Mamala Bay, Oahu, Hawaii, near Waikiki's Kaimana Beach. The COTP Honolulu determined that potential hazards associated with the salvage and removal operations, including high winds and seas, constituted a safety concern. Accordingly, the COTP Honolulu established a temporary safety zone extending 500 yards in all directions around the grounded vessel to protect personnel, vessels, and the marine environment during ongoing salvage and removal operations.

### **IV. Discussion of the Rule**

This rule extends an existing temporary safety zone. This rule is effective from 8:00 a.m. on December 1, 2017 through 8:00 a.m. on December 31, 2017, or until salvage operations are complete, whichever is earlier. If the temporary safety zone is terminated prior to 8:00 a.m. on December 1, 2017, the Coast Guard will provide notice via a broadcast notice to mariners.

The temporary safety zone encompasses all waters from the surface of the water to the ocean floor extending 500 yards in all directions around the commercial fishing vessel 400 yards southwest of Kaimana Beach near position 21° 15.69' N; 157° 49.49' W . The temporary safety zone is currently stationary around the grounded vessel. When the vessel is removed from the reef, it will be towed to a disposal site, at which time the stationary safety zone will shift to a moving safety zone. The zone shall continue to encompass 500 yards in all directions around the

commercial fishing vessel PACIFIC PARADISE and remain in effect until December 31, 2017 at 8:00 a.m. or until the disposal operation is complete, whichever is earlier. When the vessel is off the reef and removal operations commence, the Coast Guard will provide notice of the moving safety zone via a broadcast notice to mariners. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP Honolulu or his 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 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 size, location and duration of the temporary safety zone. Vessel traffic will be able to safely transit around this temporary safety zone away from the reef or during the salvage tow, which would impact only a small designated area of the waters off Kaimana Beach and Waikiki where vessel traffic is normally low. Closer to shore, the waterway is used primarily for beach recreation activities. Offshore of the beach,

waterway traffic is primarily tourism related operations which will not be affected by the tow due to the open space in the area. Moreover, vessels wishing to enter the zone may seek permission as set forth below.

#### 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 temporary 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. The temporary safety zone is limited in size and duration, and the grounded vessel is not in an actively used navigable waterway. When the vessel is removed from the reef, it will be towed to a disposal site. The tow evolution will not have a significant impact on existing waterway users. Mariners may request to enter the zone by contacting the COTP, as described below.

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.

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 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 the extension of a temporary safety zone extension for thirty days, or until the salvage and removal operations are suspended. It 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, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0982 to read as follows:

§ 165.T14-0982 Safety Zone; Mamala Bay, Oahu, HI.

(a) Location. The temporary safety zone is located within the COTP Honolulu Zone (See 33 CFR 3.70-10) and will encompass all navigable waters extending 500 yards in all directions from the commercial fishing vessel PACIFIC PARADISE, which is currently aground on a reef approximately 400 yards southwest of Kaimana Beach near position 21°15.69' N; 157°49.49' W. When the commercial fishing vessel PACIFIC PARADISE is removed from the reef, the temporary safety zone will become a moving safety zone extending 500 yards in all directions from the PACIFIC PARADISE to facilitate the towing and subsequent disposal of the vessel. The temporary safety zone will be enforced throughout the salvage, transit and removal operations within and offshore of Mamala Bay. This zone extends from the surface of the water to the ocean floor.

(b) Enforcement period. This rule is effective from 8:00 a.m. on December 1, 2017 through 8:00 a.m. on December 31, 2017, or until salvage recovery operations are complete,

whichever is earlier. If the temporary safety zone is terminated prior to 8:00 a.m. on December 31, 2017, the Coast Guard will provide notice via a broadcast notice to mariners.

(c) Regulations. The general regulations governing safety zones contained in §165.23 apply to the safety zone created by this temporary final rule.

(1) All persons are required to comply with the general regulations governing safety zones found in this part.

(2) Entry into, or remaining in, this zone is prohibited unless expressly authorized by the COTP Honolulu or his designated representative.

(3) Persons desiring to transit the temporary stationary or moving safety zone identified in paragraph (a) of this section may contact the COTP at the Command Center telephone number (808) 842-2600 and (808) 842-2601, fax (808) 842-2642 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the temporary safety zone by Federal, State, and local agencies.

(d) Notice of enforcement. The COTP will provide notice of enforcement of the temporary safety zone described in this section via verbal broadcasts and written notice to mariners and the general public.

(e) Definitions. As used in this section, “designated representative” means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the temporary safety zone described in paragraph (a) of this section.

Dated: November 29, 2017.

M.C. Long,  
Captain, U.S. Coast Guard,  
Captain of the Port Honolulu.

[FR Doc. 2017-26142 Filed: 12/4/2017 8:45 am; Publication Date: 12/5/2017]