



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2020-0195

RIN 1625-AA00

Safety Zone; Mamala Bay, Honolulu, HI – Voluntary First Amendment Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within Mamala Bay, Honolulu Hawaii. The safety zone is needed to protect personnel and vessels who may want to exercise their First Amendment in the vicinity of Honolulu Harbor and Honolulu Channel. Entrance into the safety zone does not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zone shall travel at the minimum speed necessary to maintain a safe course. Additionally, each person in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zone will not be allowed to cross an active security zone and should make alternative arrangements if necessary.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. April 17, 2020. For the purposes of enforcement, actual notice will be used from March 20, 2020 through

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0195 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 LCDR Joshua Williams, Chief of Waterways Management, Sector Honolulu, U.S. Coast Guard; telephone 808-541-4359, email

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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 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 immediate action is needed to protect the public exercising their First Amendment rights

in an area that a large passenger vessel will need to transit, and therefore publishing an NPRM is impracticable and contrary to public interest.

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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to allow individuals a safe location to exercise their First Amendment rights.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Honolulu believes that given the nature of the First Amendment activity expected and the likely type of vessels used by individuals desiring to express their First Amendment rights—namely kayaks and other small vessels—the safety zone designating a voluntary First Amendment Area is necessary to ensure the safety of those vessels and persons who choose to express their views safely and without interference from, or interfering with, other maritime traffic.

IV. Discussion of the Rule

From March 20, 2020 through April 17, 2020 there could be a number of large passenger vessels calling on the port of Honolulu. During these historic times taking place around the United States, there are individuals who have the desire to exercise their First Amendment rights. Therefore, this safety zone is located within the COTP zone (See 33 CFR 3.70-10) and will encompass an area beginning at a point 21°17'52"N, 157°52'61"W near the shore of Sand Island, thence West to a point 21°17'52"N, 157°52'77"W, thence South to a point 21°17'37"N, 157°52'77"W near the coastal waters of Mamala Bay, thence East to a point 21°17'37"N, 157°52'61"W, thence to the

beginning point. This zone extends from the surface of the water to the ocean floor, while large passenger vessels are transiting Honolulu channel. Entrance into the safety zone does not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zone shall travel at the minimum speed necessary to maintain a safe course. Additionally, those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zone will not be allowed to cross an active security zone and should make alternative arrangements if necessary.

While the Coast Guard is concerned about any security threats to the areas described above, the Coast Guard is likewise committed to ensuring that individuals who wish to express their opinions on any issue during these large passenger vessel transits, have the means to do so in a manner that protects them and other vessels operating on Mamala Bay and surrounding waters. Therefore, this safety zone is located within the COTP zone (See 33 CFR 3.70-10) and will encompass an area beginning at a point 21°17'52"N, 157°52'61"W near the shore of Sand Island, thence West to a point 21°17'52"N, 157°52'77"W, thence South to a point 21°17'37"N, 157°52'77"W near the coastal waters of Mamala Bay, thence East to a point 21°17'37"N, 157°52'61"W, thence to the beginning point, wherein the Coast Guard will allow demonstrators or any individual who wishes to express their views. This area is being established to allow individuals expressing their views the means to do so in a safe manner to their intended audience without posing an undue risk to maritime safety. After analyzing maritime traffic patterns and other environmental factors, the Coast Guard is requiring that any persons or vessels permitted to operate within the safety zone shall travel at the minimum

speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zone. Anchoring is prohibited within this zone.

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, duration, and time of year of the safety zone. Vessel traffic will be able to safely transit around the safety zone; the zone will impact a small designated area and will be enforced only during the event and event-related activities. The safety zone will be in a location where commercial vessel traffic is expected to be minimal during enforcement; commercial vessel traffic will be authorized to transit the safety zone to the extent compatible with public safety and security. Persons and vessels will be able to operate in the surrounding area adjacent to the zone during the enforcement period, and will be able to enter within the safety zone if authorized by the Captain of the Port Honolulu or a designated

representative. Moreover, the Coast Guard will issue a Broadcast to Mariners via VHF-FM main channel 16 about 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 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 call or email 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.

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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 enforced intermittently between March 20, 2020 through April 17, 2020 that will prohibit entry into an area beginning at a point 21°17'52"N, 157°52'61"W near the shore of Sand Island, thence West to a point 21°17'52"N, 157°52'77"W, thence South to a point 21°17'37"N, 157°52'77"W near the coastal waters of Mamala Bay, thence East to a point 21°17'37"N, 157°52'61"W, thence to the beginning point. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051; 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.T14-0195 to read as follows:

§ 165.T14-0195 Safety Zone; Pacific Ocean, Mamala Bay, HI – Voluntary

First Amendment Zone

(a) *Location.* The safety zone is located within the COTP Zone (See 33 CFR 3.70-10) and will encompass all navigable waters at an area beginning at a point 21°17'52"N, 157°52'61"W near the shore of Sand Island, thence West to a point 21°17'52"N, 157°52'77"W, thence South to a point 21°17'37"N, 157°52'77"W near the coastal waters of Mamala Bay, thence East to a point 21°17'37"N, 157°52'61"W, thence to the beginning point. This zone extends from the surface of the water to the ocean floor.

(b) *Regulations.* The general regulations governing safety zones contained in 33 CFR 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 33 CFR part 165.

(2) Entry into or remaining in this zone does not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zone shall travel at the minimum speed necessary to maintain a safe course. Under the general safety zone regulations in § 165.23(d) of this part, each person in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zone will not be allowed to cross an active security zone and should make alternative arrangements.

(3) Persons desiring to transit the 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).

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

(c) *Notice of enforcement.* The COTP Honolulu will cause Notice of the Enforcement of the safety zone described in this section to be made by Broadcast to the maritime community via marine safety broadcast notice to mariners on VHF channel 16 (156.8 MHz).

(d) *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 safety zone described in paragraph (a) of this section.

(e) *Enforcement period.* This rule will be enforced intermittently from March 20, 2020, through 11:59 p.m. on April 17, 2020. If the safety zone is terminated prior to 11:59 p.m. on April 17, 2020, the Coast Guard will provide notice via a broadcast notice to mariners.

Dated: March 20, 2020.

A.B. Avanni

Captain, U.S. Coast Guard,

Captain of the Port Honolulu

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