



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0424]**

**RIN 1625-AA00**

**Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish permanent safety zones for certain waters of Vieques, Puerto Rico. This action is necessary to provide for the safety of life on the navigable waters near the island of Vieques, Puerto Rico due to unexploded ordnances. This proposed rulemaking would prohibit mariners from anchoring, dredging, or trawling in the designated areas. It would also prohibit persons and vessels from being in the safety zones during clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-

0424 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Natallia Lopez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2380, email [Natallia.M.Lopez@uscg.mil](mailto:Natallia.M.Lopez@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PR	Puerto Rico
§	Section
U.S.C.	United States Code
UXO	Unexploded Ordnance

**II. Background, Purpose, and Legal Basis**

On April 30, 2020, contractors on behalf of the U.S. Navy contacted the Coast Guard requesting the establishment of permanent safety zones surrounding unexploded ordnances (UXO) in Vieques, PR. The Navy has implemented long-term plans for the deactivation and removal of the UXOs, but safety zones are needed until those operations are completed. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the UXOs would be a safety concern for anyone within the designated areas.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable

waters within the designated areas until the complete deactivation and removal of all UXOs. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish permanent safety zones in the navigable waters east of Vieques, Puerto Rico. UXOs from past military training operations remain present in the waters of east Vieques, Puerto Rico. The U.S. Navy is currently in the process of planning, retrieving, and properly disposing of the UXOs in this area. These operations will be ongoing for the next 20 years. Accordingly, ordnance clearing operations will be held at various times on the waters of East Vieques, Puerto Rico. UXOs will be retrieved by several divers working for the U.S. Navy.

This proposed safety zones area encompasses waters in East Vieques, Puerto Rico. In areas where UXOs are known to be in shallow waters, where mariners have been known to anchor which creates risk for the unintended detonation of UXOs. The safety zones would prohibit vessels from anchoring, dredging, or trawling in the designated areas at all times. Further, no vessel or person would be permitted to enter, transit through, or remain in the safety zones during clearance operations due to increased risk of explosion and fragmentation hazards.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the proposed permanent safety zones by contacting the Captain of the Port San Juan by VHF-FM radio on Channels 16 and 22A, by calling Sector San Juan Command Center at (787) 289-2041, or via email to [ssjcc@uscg.mil](mailto:ssjcc@uscg.mil). If authorization to enter, transit through, or remain in the zones during ordnance clearing operations or

anchor, dredge, or trawl at any time is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled arrivals and departure of liquefied gas carriers via a Marine Broadcast Notice to Mariners.

#### **IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 restrictions of the safety zones. Vessels will be permitted to enter the safety zones when UXO operations are not being conducted so long as they do not anchor, dredge, or trawl.

### *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 proposed rule would 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 zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian tribes, please call or email 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 proposed rule would not result in

such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a regulated navigation area. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*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.

**V. 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://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.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons stated in the preamble, the Coast Guard proposes to amend 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 § 165.787 to read as follows:

**§ 165.787 Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico.**

(a) *Regulated area.* The following regulated areas are established as a safety zones:

(1) All waters of East Vieques, Vieques, Puerto Rico encompassed within the following points: starting at Point 1 in position 18° 08' 56.48"N, 065° 20' 10.69"W; thence north to point 2 in position 18° 09' 10.72"N, 065° 20' 04.11"W; thence east to Point 3 in position 18° 08' 50.19"N, 065° 17' 05.78"W; thence south to Point 4 in position 18° 08' 05.79"N, 065° 16' 16.70"W.

(2) All waters of East Vieques, Vieques, Puerto Rico encompassed within the following points: starting at Point 1 in position 18° 07' 38.60"N, 065° 17' 45.95"W; thence south to point 2 in position 18° 07' 23.73"N, 065° 17' 58.34"W; thence west to Point 3 in position 18° 07' 18.77"N, 065° 18' 29.64"W; thence north to Point 4 in position 18° 07' 34.47"N, 065° 18' 31.82"W.

(b) *Regulations.* (1) No person or vessel may anchor, dredge, or trawl in the safety zones unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

- (2) No person or vessel may enter, transit or remain in the safety zones during Unexploded Ordnance clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative.
- (3) Vessels encountering emergencies, which require transit through the safety zones, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zones with a Coast Guard designated escort.
- (4) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the safety zones can be contacted on VHF-FM channels 16 and 22A.
- (5) Coast Guard Sector San Juan will notify the marine community of periods during which these safety zones will be in effect by providing notice to mariners in accordance with § 165.7.
- (6) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: October 9, 2020.

**J. E. Diaz,**

*Captain, U.S. Coast Guard,*

*Acting, Captain of the Port San Juan.*

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