



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2021-0056]

RIN 1625-AA00

Emergency Safety Zone; Humboldt Bay Bar Entrance Closure for Piloted Vessels, Humboldt Bay, Eureka, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Eureka, CA. This emergency safety zone is in support of the safe navigation of piloted vessels transiting and is needed to protect life, vessels, and the maritime environment from potential hazards posed by the wreckage of a fishing vessel that sank near the Channel on January 24, 2021. The location of the wreckage is currently unknown. Due to heavy weather conditions, a proper survey of the wreckage cannot be immediately completed. Unauthorized piloted vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. on February 10, 2021. For the purposes of enforcement, actual notice will be used from 12 p.m. January 26, 2021 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-2021-0056 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 e-mail Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard; telephone (415) 399-7443, e-mail SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
§	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 with respect to this rule because it is impracticable. The Coast Guard received notice of the wrecked vessel and the resulting immediate need for this safety zone on January 24, 2021. It is impracticable to go through the full rulemaking process, including providing a reasonable comment period and considering those comments, because the Coast Guard must establish this emergency temporary safety zone by January 26, 2021.

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 contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards within the Humboldt Bay Bar entrance created by a recently wrecked vessel.

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 San Francisco has determined that potential hazards associated with a vessel marine casualty exist within the entrance of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel. This rule is needed to protect personnel and piloted vessels transiting through the potentially hazardous section of the navigable waters until the wreckage can be located and addressed.

IV. Discussion of the Rule

This rule establishes a temporary safety zone in navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Eureka, CA from January 26, 2021 at 12:00 p.m. through February 10, 2021 at 11:59 p.m. The effect of the temporary safety zone will be to prohibit unauthorized navigation by piloted vessels within the Humboldt Bay Bar Channel while the hazards associated with a recent marine casualty exist. Except for piloted vessels authorized by the Captain of the Port or a designated representative, no piloted vessel may enter or remain in the restricted area. A “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety 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. 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).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone, and its application only to piloted vessels. Although this rule restricts access to the water encompassed by the safety zone, the effect of this rule will not be significant because the significant majority of vessel traffic is not piloted so will not be impacted. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-23A about the zone, and the rule allows piloted vessels desiring to transit through the temporary safety zone to do so upon express permission from the COTP or the COTP’s designated representative.

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.

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.

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 established to deal with an emergency situation, lasting just over two weeks, that will prohibit unauthorized entry by piloted vessels to the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel. 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. 01. Because this safety zone is established in response to an emergency situation and is one week or longer in duration, a Record of Environmental Consideration (REC) supporting this determination will be prepared and submitted after publication of this rule, and will be made available as indicated in the ADDRESSES section of this

preamble.

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: 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.T11-046 to read as follows:

§ 165.T11-046 Emergency Safety Zone; Humboldt Bay Bar Entrance Closure for Piloted Vessels, Humboldt Bay, Eureka, CA

(a) Location. The following area is a safety zone: All navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Eureka, CA.

(b) Definitions. As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, a piloted vessel may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

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

(3) An operator of a piloted vessel desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Piloted vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Piloted vessels may request permission to enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) Enforcement period. This section will be enforced from January 26, 2021 at 12:00 p.m. until February 10, 2021 at 11:59 p.m., or as announced via Broadcast Notice to Mariners.

(e) Information broadcasts. The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7.

Dated: January 26, 2021.

Marie B. Byrd
Captain, U.S. Coast Guard
Captain of the Port, San Francisco