



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0669]

RIN 1625-AA00

Safety Zone; Pacific Ocean, Lahaina Boat Basin, Maui, HI – Emergency Operations and Port Recovery

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters in the vicinity of Lahaina Boat Basin, Maui, Hawaii. The temporary safety zone encompasses all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with ongoing emergency response and port recovery operations after wildfires affected the area. Entry of vessels or persons in this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu.

DATES: This rule is effective without actual notice from August 15, 2023, through 11:59 p.m. on August 23, 2023. For the purposes of enforcement, actual notice will be used from 11 a.m. on August 9, 2023 until August 15, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0669 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Wade Thomson, Waterways Management Division, U.S. Coast Guard Sector Honolulu at (808) 541-2359 or Wade.P.Thomson@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

II. Background Information and Regulatory History

On August 9, 2023, high winds and wildfires struck portions of Maui, Hawaii, causing damage to coastal infrastructure and prompting mass rescue operations for area residents.

On August 9, 2023, the Coast Guard issued a temporary rule to establish a safety zone for all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui, to protect personnel, vessels, and the marine environment from potential hazards associated with emergency response and port recovery operations after wildfires affected the area.

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 facilitate an emergency salvage operation. Due to the

numerous threats to safety posed by uncontrolled wildfires, timely emergency response efforts do not allow for public comment, and therefore publishing a 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 respond to the potential safety, navigational and environmental hazards associated with emergency response to Lahaina, Maui, area wildfires.

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). August 9, 2023, the Coast Guard was informed of damage, pollution, and debris in the vicinity of Lahaina Boat Basin, Maui, Hawaii. The Coast Guard COTP Sector Honolulu has determined that the potential hazards associated with the emergency response and port recovery efforts connected to wildfires in the area constitute a safety concern for anyone within the designated safety zone. This rule is necessary to protect personnel, vessels, and the marine environment within the navigable waters of the safety zone during ongoing emergency response and port recovery operations.

IV. Discussion of the Rule

This rule is effective from August 9, 2023 at 11 a.m. through August 23, 2023 at 11:59pm, or until emergency response and port recovery operations are complete, whichever is earlier. If the safety zone is terminated prior to 11:59 pm on August 23, 2023, the Coast Guard will provide notice via a broadcast notice to mariners. The temporary safety zone encompasses all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. The safety zone is needed to protect personnel,

vessels, and the marine environment from potential hazards associated with ongoing emergency response and port recovery operations after wildfires affected the area. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP 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. 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 size, location, and duration, of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the navigable waters off the shores of Lahaina, Maui, Hawaii. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine 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. This safety zone is limited in size and duration, and mariners may request to enter the zone by contacting the COTP.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 lasting 14 days, or until operations are complete, that will prohibit entry into all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. 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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T14-00669 to read as follows:

§ 165.T14-0669 Safety Zone; Pacific Ocean, Lahaina Boat Basin, Maui, HI – Emergency Operations and Port Recovery

(a) *Location.* The following area is a safety zone: All waters all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. This zone extends from the surface of the water to the ocean floor.

(b) *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.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, you 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) To seek permission to enter, 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). 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.

Dated: August 9, 2023.

A. L. Kirksey,
Captain, U.S. Coast Guard,
Captain of the Port Honolulu.

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