



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2023-0010]

Danger Zone; Marine Corps Base Hawaii, Kaneohe Bay, Island of Oahu, Hawaii

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend the regulations for the existing danger zone at the U.S. Marine Corps Ulupau Crater Weapons Training Range in the vicinity of Kaneohe Bay, Hawaii. The U.S. Marine Corps requested a change to the hours that weapons firing may occur. These regulations are necessary to protect the public from potentially hazardous conditions which may exist as a result from use of the areas by the U.S. Marine Corps.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2023-0010, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE-2023-0010, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2023-0010. All comments received will be included in the public docket without change and may be made available on-line at <https://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](https://www.regulations.gov) or e-mail. The [regulations.gov](https://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](https://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information with your comment. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the danger zone regulations at 33 CFR 334.1380 to change the hours that weapons firing may occur at the Ulupau Crater Weapons Training Range, Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii.

The danger zone represents a public safety buffer beyond the physical boundaries of the training range to further reduce the safety threat to the boating public. The geographical nature of the crater combined with the use of man-made measures makes the crater secure from unintended projectiles exiting its confines, although a very slight possibility exists that a projectile could ricochet or otherwise be inadvertently fired beyond the confines of the crater. Under current conditions, sensitive wildlife areas, including designated protected areas, are encompassed within the existing boundaries of the danger zone. Since munitions are not intentionally fired into waters surrounding Ulupau Crater and the probability of an unintended projectile exiting the crater is negligible, an extension in the time that weapons may be fired will not incrementally change, modify or otherwise adversely impact sensitive marine species and organisms that inhabit or are supported by the waters and protected areas occurring within the danger zone. Marine resources, including endangered species, migratory shorebirds, and other seabirds that occupy designated protected areas will remain adequately protected by the MCBH under obligations of pre-existing

agreements. For similar reasons, submerged lands will not be directly or indirectly adversely affected by the expanded danger zone.

The current regulations state that weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 11 p.m., Monday through Sunday. In the proposed rule, the time period for weapons firing is extended three hours so that weapons may be fired at any time between 6 a.m. and 2 a.m., Monday through Sunday.

Procedural Requirements

a. Regulatory Planning and Review. This proposed rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. Review under the Regulatory Flexibility Act. This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The danger zone is necessary to protect public safety during use of the weapons firing range. The danger zone regulation allows any vessel that needs to transit the danger zone to expeditiously transit through the danger zone whenever weapons firing is scheduled. The proposed amendment to this regulation would only change the hours when the danger zone is activated; it would not change the geographic extent of the existing danger zone. When the range is not in use, the danger zone will be open to normal maritime traffic and to

all activities, include anchoring and loitering. When the danger zone is activated, small entities can utilize navigable waters outside of the danger zone. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public.

c. Review under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments received have been considered.

d. Unfunded Mandates Act. This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of section 203 of UMRA.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Amend § 334.1380, by revising the first sentence of paragraph (b)(1) to read as follows:

§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.

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(b) * * *

(1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 2 a.m., Monday through Sunday. * * *

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Thomas P. Smith,
Chief, Operations and Regulatory Division.