



## DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Military Ocean Terminal Concord, California; Restricted Area

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

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to modify an existing permanent restricted area within waters along the shoreline of the Military Ocean Terminal Concord (MOTCO), on the south shore of Suisun Bay, north of the City of Concord, Contra Costa County, California. The amendment was requested by U.S. Army Military Surface Deployment and Distribution Command (SDDC) to expand the boundaries of the MOTCO restricted area in order to provide an adequate security buffer for MOTCO shoreline infrastructure and operational needs.

DATES: Effective date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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

SUPPLEMENTARY INFORMATION: In response to this request by the SDDC, and 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 amending paragraph (a) of 33 CFR

334.1110 to expand the boundaries of the existing MOTCO restricted area. The existing boundary at the western terminus is shifted approximately 700 yards west along the shoreline so that it encompasses the mouth of Hastings Slough and eliminates a potential route of unauthorized encroachment into the MOTCO installation. Along the central and eastern parts of the restricted area, the existing boundary is shifted bayward to the edge of an existing navigation channel (Roe Island Channel, Port Chicago Reach, and Middle Ground West Reach). The revised eastern boundary follows the southern edge of the navigation channel, and will not encroach into or impact vessel traffic in the navigation channel. The eastern shoreline terminus remains at its original location.

The proposed rule to expand the existing MOTCO restricted area was published in the January 11, 2023, edition of the Federal Register (88 FR 1532) and the regulations.gov docket number was COE–2022–0012. No comments were received in response to the proposed rule. The January 11, 2023, proposed rule included coordinates of reference points A through G along the revised boundary. Minor adjustments to the coordinates of boundary points D and E have been made in this final rule to locate the points just outside the boundaries of the adjacent navigation channel, and ensure that the restricted area does not encroach on the navigation channel. Additional formatting changes were made to the coordinates of other points to ensure data consistency. All coordinates are now shown in decimal degrees to four decimal places, which did not alter the locations of the points that were not changed by this final rule.

#### Procedural Requirements

*a. Regulatory Planning and Review.* This final 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 final 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 Corps expects that the changes to the boundaries of this restricted area will have no appreciable economic impact on the public, will result in no anticipated navigational hazards, and will not interfere with existing waterway traffic. Small entities can still utilize navigable waters outside of the restricted area. The Corps therefore certifies that this final rule would have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps has determined that this rule will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared for the final rule and may be reviewed by contacting the Corps' San Francisco District office at [CESPN-RG-Info@usace.army.mil](mailto:CESPN-RG-Info@usace.army.mil).

d. *Unfunded Mandates Act.* The final rule does not impose an enforceable duty among the private sector and, therefore, is not a federal private sector mandate, and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1501 et

seq.). The Corps has also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

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 final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Classified information, Marine safety, Navigation (water), Security measures, Transportation, Waterways.

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For the reasons set out in the preamble, the Corps amends 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 § 334.1110 by revising paragraph (a) to read as follows:

#### § 334.1110 Military Ocean Terminal Concord; restricted area.

- (a) *The area.* (1) Beginning at point A on the shore west of the mouth of a small slough (known as Hastings Slough) and passing east of buoy R “6” bearing 60°30’ for 2,860 yards, through Point B on the eastern end of the two Seal Islands, to point C on the southern

edge of the Roe Island Channel near buoy R “16A”; thence in a generally easterly direction running along the southern edge of the Roe Island Channel, Port Chicago Reach and Middle Ground West Reach (points D and E) to point F directly north of the eastern shore boundary (point G); thence 180° to point G on the shore line; thence following the high water shore line in a general westerly direction to the point of beginning. The coordinates for the points in paragraph (a)(1) of this section are provided in Table 1.

Table 1 to Paragraph (a)(1)

	Latitude	Longitude
Point A (shoreline)	38.0513	-122.0576
Point B	38.0579	-122.0430
Point C	38.0630	-122.0307
Point D	38.0611	-122.0205
Point E	38.0593	-122.0010
Point F	38.0594	-121.9882
Point G (shoreline)	38.0521	-121.9882

(2) The datum for these coordinates is NAD-83.

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