



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0803]

RIN 1625-AA11

Security Zone; Coast Guard Sector Key West, Trumbo Point Annex, Key West Harbor, Key West, FL.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone for certain waters of the Key West Harbor surrounding the U.S. Coast Guard Sector Key West on Trumbo Point Annex. This action is necessary to safeguard Coast Guard assets in the interest of national security. This rule will prohibit persons and vessels from being in the security zone unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER 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-2023-0803 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 about this rule, call or email Lieutenant Hailye Wilson, Waterways Management Division, U.S. Coast Guard; telephone 305-292-8768, email Hailye.M.Wilson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NAS	Naval Air Station
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard Sector Key West, FL and its assets are on property previously under the control of the Naval Air Station (NAS) Key West, FL. The current regulations restricting vessel traffic in and around NAS Key West are found in 33 CFR 334.610 and are only enforceable by the Commanding Officer of NAS Key West, and certain designated agencies. Currently, the Coast Guard requires the authority from the Commanding Officer, NAS Key West, before they can enforce a security zone in and around Coast Guard property and assets. This additional step can generate unnecessary delays, which creates security concerns for the Coast Guard and potential hazards to the public. The Captain of the Port Key West (COTP) has determined that a permanent security zone is in the interest of national security, the safety of life, and the prevention of damage to property.

In response, on November 9, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Security Zone; Coast Guard Sector Key West, Trumbo Point Annex, Key West Harbor, Key West, FL, (88 FR 77242). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended December 11, 2023, we received two comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70051 and 70124. The purpose of this rule is to ensure the security of vessels, waterfront facilities,

and personnel located at the Coast Guard, Sector Key West.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received comments from two commenters on our NPRM published November 19, 2023. The first commenter requested that the Coast Guard provide a 300-foot exclusion zone of the security zone around the pier extending towards the Key West Bight Channel. The commenter stated the pier is located at the southernmost part of the property being protected by the security zone and is currently leased by Atlantic Targets and Marine Operations (ATMO) Key West Detachment. This commenter expressed concern the security zone would extend beyond that pier and inadvertently create restrictions in the channel that would then require many vessels returning to port to declare their intentions via marine radio. The security zone will not be measured from the “extended finger pier (extending south)” and would not restrict normal transit paths for vessels in the area. To minimize misinterpretation of the regulatory intent, we have amended the regulatory language to include a specific southwesterly point to the security zone.

The same commenter expressed the security zone could burden certain vessels that require approximately between 50 to 300 feet of clearance from the pier to safely lower their sails and/or make the necessary preparations to dock the vessel. This commenter added the Sunset Key ferry dock location would be encompassed by the security zone, and the security zone would force the ferry dock out of business. Vessels that require extra time to lower their sails can do so in designated areas outside the security zone and outside the Key West Bight Channel.

As stated in the regulatory text, vessels are permitted to transit via safe speed through the adjacent channel without restrictions by the security zone. The pier is currently being leased by ATMO from the U.S. Coast Guard. The pier could be used in the future to house cutters and other military assets, at which time the security zone

would need to be in effect in its entirety, not to include the exclusionary zone.

Additionally, the security zone does not include the Sunset Key ferry dock area. The security zone does not impose restrictions for vessels transiting the area and will not impact business.

The second commenter expressed the security zone could help protect facilities considered sensitive, protecting naval vessels and cruise ships. The Coast Guard acknowledges this comment.

There is one change in the regulatory text in response to a comment by amending the regulatory language to include a specific southwesterly point to the security zone.

This rule establishes a permanent security zone surrounding the Coast Guard Sector Key West, located adjacent to Trumbo Point Annex, Naval Air Station Key West. The security zone would cover all navigable waters within 100 yards of the Coast Guard Sector Key West. No vessel, other than Government-owned vessels and specifically authorized private craft, or persons would be permitted to stop or land in the security zone.

The Coast Guard is revising the regulatory text in response to comment by amending the regulatory language to include a specific southwesterly point to the security 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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the area covered by the permanent security zone created by this rule is already a regulated restricted area as contained in 33 CFR 334.610. Unauthorized vessels and persons have not been allowed to stop and land within 100 yards of the Coast Guard base on Trumbo Point Annex through the regulation in § 334.610. This rule allows the Coast Guard to enforce the restricted area through a security zone. Additionally, the security zone only extends 100 yards from the Coast Guard Sector Key West, located adjacent to Trumbo Point Annex, Naval Air Station Key West and does not impede any regular vessel traffic (i.e., cruise ships, ferries, small passenger vessels, etc.). Vessels will be able to transit safely around 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 received no comments from the Small Business Administration on this rulemaking. 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.

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 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 security zone that would prohibit vessels and persons from stopping or landing within 100 yards of the United States Coast Guard base on Trumbo Point Annex. It is 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 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 § 165.764 to read as follows:

§ 165.764 Security Zone; Coast Guard Sector Key West, Trumbo Point

Annex, Key West Harbor, Key West, FL.

(a) *Location.* The following area is a security zone: All waters within 100 yards of the Coast Guard Sector Key West, from surface to bottom, encompassed by a line that extends north 100 yards into the Fleming Key Channel from point 24°34'02" N, 81°47'52.7" W; thence westerly, maintaining 100 yards from the Coast Guard property; thence southerly, 100 yards from the end of the piers to 24° 33' 50.6" N 81° 48'11.0" W; thence easterly to 24°33'48.8" N, 081°47'54.8" W, and along the shore line back to the beginning point. These coordinates are based on North American Datum 1983.

(b) *Definitions.* As used in this section, *vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, no person or vessel may enter or remain in the security zone described in paragraph (a) of this section without the permission of the Captain of the Port, other than

Government-owned vessels.

(2) While anchoring, loitering, or fishing activities are prohibited, vessels may transit the following portions of the security zone at safe speed:

(i) Fleming Key Cut, extending from the northwest corner of Pier D-3 of U.S. Coast Guard Key West, eastward beneath the Fleming Key bridge.

(ii) Key West Bight Channel, which extends easterly from the Main Ship Channel into Key West Bight, the northerly edge of which channel passes 25 feet south of the U.S. Coast Guard Sector Key West piers on the north side of the Bight.

Jason D. Ingram,
CAPT, U.S. Coast Guard,
Captain of the Port, Sector Key West.

[FR Doc. 2024-11252 Filed: 5/21/2024 8:45 am; Publication Date: 5/22/2024]