

responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34) (g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation.

### 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 proposes to amend 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:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

#### §§ 165.T09-109 and 165T09-110 [Removed]

2. Remove §§ 165.T09-109 and 165.T09-110.
3. Add § 165.916 to read as follows:

#### § 165.916 Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan.

(a) *Location.* The following are security zones:

(1) *Kewaunee.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 20.647 N, 087° 31.980 W, then easterly to 44° 20.647 N, 087° 31.886 W, then southerly to 44° 20.391 N, 087° 31.866 W, then westerly to 44° 20.391 N, 087° 32.067 W, then northerly following the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(2) *Point Beach.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 17.06 N, 087° 32.15 W, then northeasterly to 44° 17.12 N, 087° 31.59 W, then southeasterly to 44° 16.48 N, 087° 31.42 W, then southwesterly to 44° 16.42 N, 087° 32.02 W, then northwesterly along the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747-7155 or on VHF-FM Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 19, 2002.

**M.R. Devries,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

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**BILLING CODE 4910-15-U**

### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 02-008]

RIN 2115-AA97

#### Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is revising the effective period of a temporary safety zone in the Gulf of the Farallones, North Pacific Ocean, surrounding the site of a sunken freight vessel, JACOB LUCKENBACH, from which the Coast Guard and other government agencies are removing oil trapped inside the wreck. The purpose of this safety zone is to protect persons and vessels from hazards associated with oil removal operations. Persons and vessels are prohibited from entering into or transiting through the safety zone unless

authorized by the Captain of the Port, or his designated representative.

**DATES:** The amendment to § 165.T11-082(c) in this rule is effective July 25, 2002. Section 165.T11-082, added at 67 FR 39600, June 10, 2002, effective from 11:59 p.m. PDT on May 14, 2002 to 11:59 p.m. PDT July 31, 2002, as amended in this rule, is extended in effect to 11:59 p.m. PDT on September 30, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 02-008] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, California 94501-5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### *Regulatory Information*

On June 10, 2002, we published a temporary final rule (TFR) titled "Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA" in the **Federal Register** (67 FR 39598) under § 165.T11-082. It has been in effect since May 14, 2002 and is set to expire 11:59 p.m. PDT on July 31, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The original TFR was urgently required because once it was decided that oil removal was the most prudent means of protecting against future discharges from the sunken vessel, it was determined that publishing a NPRM and delaying the effective date of the safety zone would be contrary to the public interest. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. Accordingly, using the same rationale that was used for the original TFR, publishing a NPRM and delaying the effective date would be contrary to the public interest since the oil removal operations necessitating this safety zone would likely terminate before the rulemaking process was complete.

For the same reasons stated above, 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**.

### Background and Purpose

In November of 2001, the Coast Guard and other cognizant government agencies began receiving reports of oiled birds washing ashore along the California coastline between Monterey and Sonoma counties. Weeks of searching for surface sheens yielded negative results and prompted responding government agencies to consider sunken vessels in the area as possible sources of the contaminating oil. By February 2002, responding agencies identified the sunken freight vessel JACOB LUCKENBACH as the most probable source and began deploying camera-equipped remotely operated vehicles (ROVs) in order to view the sunken vessel. During this period, the Coast Guard learned that recreational and commercial divers had been diving on or were planning to dive on the sunken vessel while responding agencies were conducting the on-scene investigation. In February 2002, the Coast Guard established a temporary safety zone in the navigable waters surrounding the JACOB LUCKENBACH in order to protect persons and vessels from hazards associated with the investigation operations. That temporary safety zone expired at the end of April 2002.

The Coast Guard and other government agencies have reviewed the results of the investigation and have determined that removal of the oil from within the JACOB LUCKENBACH is the most prudent means of protecting against future oil discharges. Removal of the oil will require several surface and submersible vessels and associated equipment, all of which present hazards, particularly collision dangers, to persons and vessels in the area. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. This temporary final rule will extend this safety zone that was set to expire July 31, 2002 for 2 months—from July 31, 2002, to September 30, 2002.

### Discussion of Rule

In order to continue facilitating safe oil removal operations and to guard against the possibility of an accidental discharge of a large quantity of oil into the environment, the Coast Guard is extending the current temporary safety zone in the navigable waters surrounding the sunken vessel. The safety zone encompasses all waters from the surface of the ocean to the bottom

within a one nautical mile radius centered at 37°40.38' N, 122°47.59' W, the approximate position of the JACOB LUCKENBACH. Entry into, transit through or anchoring in this zone by persons, vessels or ROVs is prohibited, unless authorized by the Captain of the Port, or his designated representative. The requirements of this safety zone do not apply to deep draft vessels transiting within the Offshore Traffic Separation Scheme.

### Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). Due to the continued short duration and limited geographic scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. § 601–612), we must consider whether this rule will have a significant economic impact on a substantial number of small entities. “Small entities” may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

For these reasons and the reasons stated in the Regulatory Evaluation section above, 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.

### Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its

effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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).

### Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 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 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.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

### Regulation

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:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Revise § 165.T11-082 to read as follows:

**§ 165.T11-082 Safety Zone: North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA.**

\* \* \* \* \*

(c) *Effective period.* This section is effective at 11:59 p.m. PDT on May 14, 2002 and will terminate at 11:59 p.m. PDT on September 30, 2002. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

\* \* \* \* \*

Dated: July 25, 2002.

**L. L. Hereth,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-01-155]

RIN 2115-AA97

#### Safety Zone: Vessel Launches, Bath Iron Works, Kennebec River, Bath, Maine

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a 150-yard radius safety zone around the Bath Iron Works facility dry dock in Bath, Maine to be activated when the dry dock is deployed and positioned in its dredged basin hole near the center of the Kennebec River. This safety zone is needed to protect the maritime community from the possible hazards to navigation associated with positioning a 700-foot dry dock near the center of the river to launch and recover large vessels.

**DATES:** This rule is effective August 1, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01-01-155 and are available

for inspection or copying at Marine Safety Office Portland, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On December 26, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Vessel Launches, Bath Iron Works, Kennebec River, Bath, ME" in the **Federal Register** (66 FR 66380). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

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**. Any delay in the establishment of this rule would be contrary to the public interest as this safety zone is necessary immediately to ensure the safety of the maritime community during vessel launches currently scheduled for the beginning of August. Bath Iron Works has informed the Coast Guard that they will be using the dry dock several times in the near future, beginning August 2, 2002, as they complete work on several large vessels. It is necessary to make this rule effective in less than 30 days after publication in order to protect the maritime community from the possible hazards to navigation associated with positioning a 700-foot dry dock near the center of the Kennebec River to launch and recover large vessels.

#### Background and Purpose

The Bath Iron Works facility in Bath, Maine acquired a 700-foot dry dock to aid in vessel launchings and repairs. This dry dock needs to be pulled away from shore and placed in a dredged basin near the center of the Kennebec River, approximately 0.5 nm south of the new Bath-Woolwich Bridge and just to the east of Trufant Ledge, in order to submerge and be able to launch and recover vessels. To accomplish this a series of permanent anchors and submerged chains in the river is used. It is necessary to restrict vessel movement in this area during deployment to protect mariners from this system and any associated vessels involved with the deployment.

This rule establishes a permanent moving safety zone around the dry dock