

Drafting Information

The author of this document is Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Export, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, 27 CFR Part 53, Manufacturers Excise Taxes—Firearms and Ammunition, is amended as follows:

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, and 7502.

Par. 2. Section 53.11 is amended by adding a new definition for the term “knockdown condition” to read as follows:

§ 53.11 Meaning of terms

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Knockdown condition. A taxable article that is unassembled but complete as to all component parts.

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Par. 3. Section 53.61(b) is revised to read as follows:

§ 53.61 Imposition and rates of tax.

* * * * *

(b) *Parts or accessories.* (1) *In general.* No tax is imposed by section 4181 of the Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm for use as spare parts or accessories. The tax does attach, however, to sales of completed firearms, pistols, revolvers, shells, and cartridges, and to sale of such articles that, although in knockdown condition, are complete as to all component parts.

(2) *Component parts.* Component parts are items that would ordinarily be attached to a firearm during use and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer. All component parts for firearms are includible in the price for which the article is sold.

(3) *Nontaxable parts.* Parts sold with firearms that duplicate component parts that are not includible in the price for which the article is sold.

(4) *Nontaxable accessories.* Items that are not designed to be attached to a firearm during use or that are not, in the ordinary course of trade, provided with the firearm at the time of the sale by the manufacturer or importer are not includible in the price for which the article is sold.

(5) *Examples.* (i) *In general.* The following examples are provided as guidelines and are not meant to be all inclusive.

(ii) *Component parts.* Component parts include items such as a frame or receiver, breech mechanism, trigger mechanism, barrel, buttstock, forestock, handguard, grips, buttplate, fore end cap, trigger guard, sight or set of sights (iron or optical), sight mount or set of sight mounts, a choke, a flash hider, a muzzle brake, a magazine, a set of sling swivels, and/or an attachable ramrod for muzzle loading firearms when provided by the manufacturer or importer for use with the firearm in the ordinary course of commercial trade. Component parts also include any part provided with the firearm that would affect the tax status of the firearm, such as an attachable shoulder stock.

(iii) *Nontaxable parts.* Nontaxable parts include items such as extra barrels, extra sights, optical sights and mounts (in addition to iron sights), spare magazines, spare cylinders, extra choke tubes, and spare pins.

(iv) *Nontaxable accessories.* Nontaxable accessories include items such as cleaning equipment, slings, slip on recoil pads (in addition to standard buttplate), tools, gun cases for storage or transportation, separate items such as knives, belt buckles, or medallions. Nontaxable accessories also include optional items purchased by the customer at the time of retail sale that do not change the tax classification of the firearm, such as telescopic sights and mounts, recoil pads, slings, sling swivels, chokes, and flash hidens/muzzle brakes of a type not provided by the manufacturer or importer of the firearm in the ordinary course of commercial trade.

* * * * *

Signed: May 28, 1998.

John W. Magaw,
Director.

Approved: August 3, 1998.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 98–26133 Filed 9–30–98; 8:45 am]
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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD 13–98–023]

RIN 2115–AE84

Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard, after consultation with the Department of Justice, Department of Interior and the Department of Commerce, is establishing a permanent Regulated Navigation Area (RNA) along the northwest Washington coast and in a portion of the entrance of the Strait of Juan de Fuca. The RNA will reduce the danger to life and property in the vicinity of Makah whale hunt activities. Within the RNA, a Moving Exclusionary Zone around a Makah whale hunt vessel will be in effect during actual whale hunt operations.

DATES: The interim rule becomes effective upon publication in the **Federal Register**. Comments regarding this rule must be received by March 1, 1999.

ADDRESSES: You may mail comments to: Thirteenth Coast Guard District (m), (CGD 13–98–023), 915 Second Avenue, Seattle, WA 98174, or deliver them to room 3506 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (206) 220–7210.

The Thirteenth Coast Guard District Marine Safety Division maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room 3506, Thirteenth Coast Guard District Offices, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jim Peschel (206) 220–7210.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

Migrating gray whales are expected in the Regulated Navigation Area (RNA) after October 1, 1998. The Makah tribe's whaling plan indicates they may begin hunting these whales in October 1998. There has been substantial publicity and debate concerning the hunt. An early effective date for this rule will help

ensure safety of persons and property at sea should whale hunting operations commerce during October. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 13-98-023) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard is accepting comments on this interim rule until March 1, 1999. The Coast Guard will consider all comments received during the comment period and may change this interim rule in view of the comments. Changes may be made to this rule during the comment period if warranted by circumstances. The Coast Guard plans to issue a final rule after observing hunt operations.

The Coast Guard has not scheduled a public hearing at this time. Persons may request a public hearing by writing to the Thirteenth Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial to this rulemaking. If it determines that an opportunity for oral presentations will aid this rulemaking, the Coast Guard will schedule a public hearing at a time and place announced in a separate notice published in the **Federal Register**.

Regulatory History

On July 22, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting" in the **Federal Register** (63 FR 39256). The Coast Guard received 243 letters regarding the proposed rule during a 45 day comment period. No public hearing was held.

Background and Purpose

The Makah Tribe has a federally recognized treaty right to hunt whales and has received permission from the

International Whaling Commission to kill up to five gray whales annually in the Makah's usual and accustomed fishing area off the northwest coast of Washington and in the entrance of the Strait of Juan de Fuca. The hunts will likely be accomplished using a harpoon and a .50 caliber rifle, fired from a small boat. This rule will reduce the dangers to persons and vessels in the vicinity of whale hunts. The uncertain reactions of a pursued or wounded whale and the inherent dangers in firing a hunting rifle from a pitching and rolling small boat could endanger life and property if persons and vessels are not excluded from the immediate vicinity of a hunt.

Discussion of Comments and Changes

The Coast Guard received a total of 243 documents containing comments to the proposed rule. The documents included letters from 12 organizations, 1 federal agency, the Makah tribe, and 5 petitions with multiple signatures. Responses to these comments and changes made in the proposed rule are discussed in the following paragraphs.

The most frequent comment was that the RNA violated first amendment rights. Generally, these comments raised the concern that the 500 yard Moving Exclusionary Zone distance prevents appropriate documentation and recording of an event that is of significant public interest. One comment said the regulation would prevent effective protests. Another proposed that licenses be issued to the media. The Coast Guard recognizes that a significant public interest exists in recording and documenting this event by the media, and will accommodate this request consistent with appropriate safety concerns. The Coast Guard intends to allow a single press pool vessel within the Moving Exclusionary Zone under certain restrictions spelled out in the interim rule. Requiring other members of the public, including potential protesters, to remain 500 yards away from the hunt is a reasonable, content neutral restriction in light of the serious safety concerns presented by a whale hunt. The carefully tailored interim rule and the allowance for a press pool vessel within the Moving Exclusionary Zone balances significant public safety concerns, tribal treaty rights, and first amendment rights.

Numerous comments opposed any whaling. A petition with several signatures requested that the Coast Guard stay neutral and only issue warnings and guidelines. The Coast Guard has not been involved in the decisions leading up to authorization of this hunt, but has been informed by the Department of Interior and Department

of Justice that physical interference with the Makah whale hunt is inconsistent with federal law. The Coast Guard is very concerned about public safety aspects of the Makah whale hunt and, through implementation of this rule, is taking some carefully tailored precautions without unconstitutionally infringing on public activities.

Numerous comments opposed the use of any nontraditional weapons by the Makah, particularly the .50 caliber weapons. Comments also stated the Coast Guard should force the hunt further out to sea. Numerous comments disagreed with the U.S. Government's position that the Makah have International Whaling Commission permission to whale. Some comments also indicated that the hunt is inconsistent with international law and compromises the U.S. position on international whaling. Several comments expressed that the hunt would not promote the Tribe's well being, that the hunt would lead to commercial whaling on a world-wide basis, and that whale hunting violates the Marine Mammal Protection Act. One comment stated that the RNA could result in killing "JJ the whale." These comments involve matters outside the scope of this rule and are primarily the concern of other federal and international bodies. The Coast Guard is working with other agencies to ensure its efforts are consistent with federal law.

Some comments opposed the RNA because similar exclusion zones are not established for other hunting activities, including whaling by Native Americans in Alaska. This RNA involves the largest species to be hunted in the nation. The Makah's intended use of .50 caliber weapons, the unpredictable actions of a whale once struck, and the unforgiving nature of a cold ocean environment call for the carefully tailored safety measures in this interim rule. Other federal agencies have enacted similar zones around dangerous activities (e.g. the U.S. Forest Service for timber harvests).

Many comments noted that ricochets and stray rifle fire could travel well beyond the proposed 500 yards. Some of these comments suggested that the Moving Exclusionary Zone was too small. One comment said the hunt would jeopardize the safety of small vessels because of the presence of wounded whales throughout the area. The Coast Guard agrees that dangers exist within the 500 yard zone—and beyond—and urges mariners to maintain a distance well beyond 500 yards during whaling operations as an additional safety measure. A .50 caliber rifle could send a bullet beyond 7000

years with the proper trajectory and environmental conditions. The Makah have indicated that they intend to aim their rifle at a downward angle when shooting at a whale. The closer a vessel is to the weapons and whale, the greater the threat to safety of those aboard. The Coast Guard will review its interim decision to maintain a 500 yard Moving Exclusionary Zone after evaluating it during actual whale hunts. The zone may be expanded or contracted in the final rule based on lessons learned.

Some comments raised concerns that the proposed SECURITE broadcasts would not give vessels adequate notice of the Moving Exclusionary Zone. The Moving Exclusionary Zone is activated when a Makah whaling vessel displays the international numeral pennant five (5) flag. Additionally, the rule has been adjusted to require that the Makah whalers provide a Channel 16 VHF-FM SECURITE notice one hour prior to whale hunt operations and every half hour following that until completion of the hunt. In addition, all vessels transiting the RNA are urged to keep an operating marine radio tuned to Channel 16 VHF-FM.

Numerous comments requested a public hearing, and others requested that the comment period be extended.

The Coast Guard is proceeding with an interim rule, and comments are invited until March 1, 1999 for consideration prior to issuance of a final rule. The Coast Guard may hold a public hearing, if appropriate, prior to adoption of a permanent rule. Based on all the comments received to date, there has been an adequate forum and sufficient time for the public to express its concerns.

Several comments have been received opposing the proposed rule because a portion of the RNA lies within the Olympic Coast National Marine Sanctuary (Sanctuary). The administrative agency responsible for the Sanctuary is the Department of Commerce/National Oceanic and Atmospheric Administration (NOAA). The Coast Guard has been in frequent contact with NOAA on this matter, including consultations regarding the Sanctuary. NOAA requested that the RNA be expanded to include a greater portion of the Sanctuary, but the Coast Guard is declining to do so at this time.

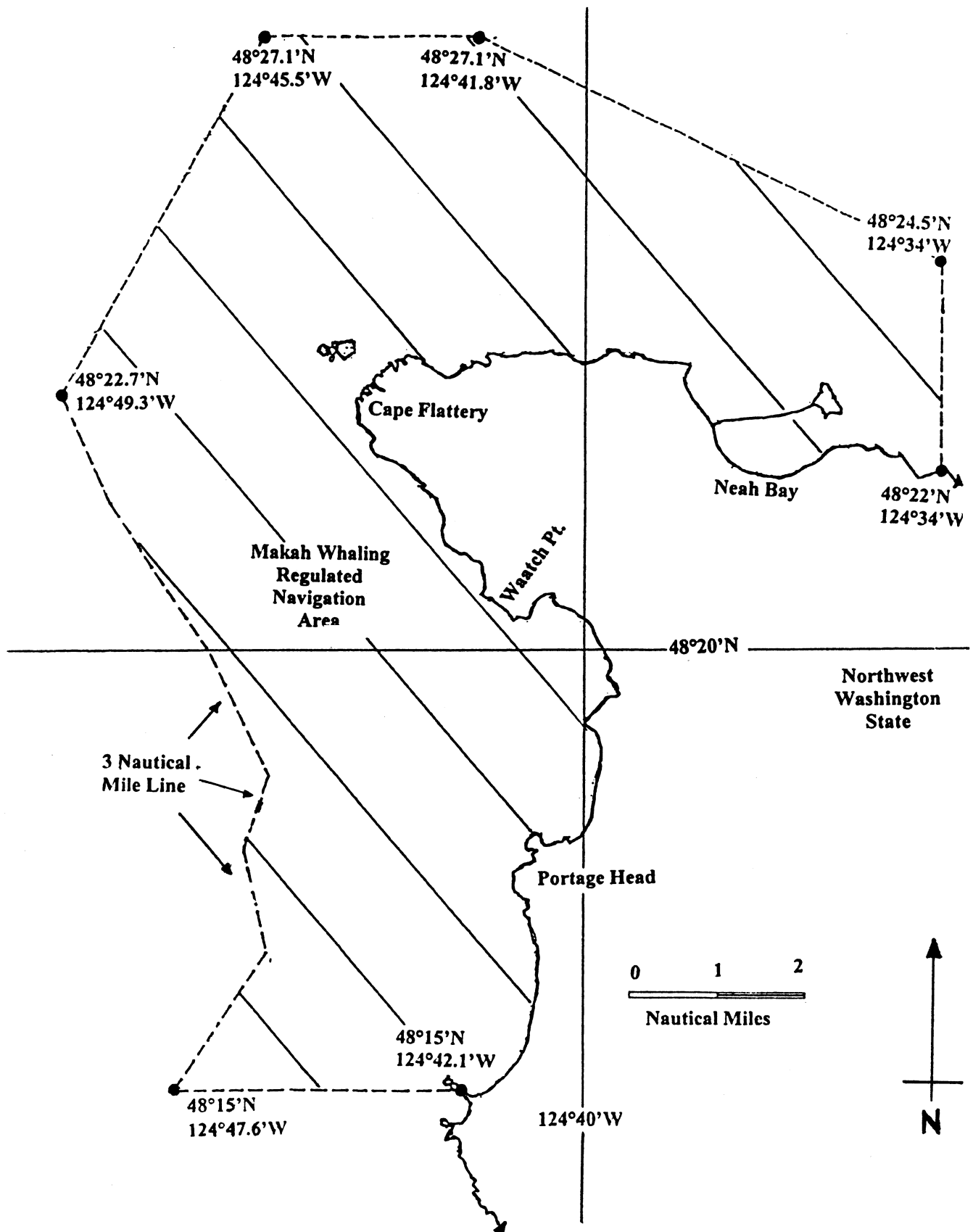
Some comments disputed the Coast Guard's statement that a wounded whale presents a danger to safety. The Coast Guard disagrees based on information received from NOAA and historical data included in the public

file. This information suggests that a large, strong, wounded whale may thrash about and that this could present a significant hazard to vessels and people. Violent encounters with wounded whales are quite possible and this presents a potentially lethal danger to humans.

Some comments stated that there was no evidence supporting the finding that physical interference with the hunt is inconsistent with federal law. Another comment asks that the proposed rule acknowledge that it was being adopted pursuant to the U.S. Government's obligation to prevent third parties from interfering with the Makah's exercise of whaling rights under the Neah Bay Treaty. The Department of the Interior (DOI) is the agency tasked with determination of tribal treaty rights. In DOI's view, the Makah Tribe's right to engage in the harvest of whales is protected by federal law, and the federal government has legal authority to protect the exercise of that right. The central purpose of this regulation, however, is to enhance safety at sea.

A comment requested that the permanent rule include a map of the regulated area. This is an illustration of the RNA:

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Some comments questioned the extension of the Moving Exclusionary Zone to the seabed. A reason for including the subsurface environment in the zone is that bullets and wounded whales create safety hazards both upon and below the surface of the water. Additionally, subsurface traffic within the Moving Exclusionary Zone poses a potential for collision with surface vessels maneuvering various courses to track and hunt whales. Finally, in the event of any problems under the surface of the water, subsurface search and rescue assets are almost non-existent in the RNA locale.

Some comments requested clarification regarding the size of the Moving Exclusionary Zone when more than one Makah vessel was present for a hunt. The Makah whaling plan calls for use of a canoe working with a motorized vessel. Under new language in the interim rule, only one Moving Exclusionary Zone may exist within the RNA at any one time. In other words, if a Makah canoe and a Makah motorized vessel are working together during a whale hunt, only one of these vessels may fly international numeral pennant five (5); other vessels must maintain a distance of 500 or more yards from the vessel flying this pennant.

Some comments objected to the continuation of the Moving Exclusionary Zone after the whale is killed. The Coast Guard has little information regarding the hazards of towing a whale that may or may not be dead, but predicts that the initial whale towing efforts by the Makah will likely involve non-routine hazards. The Coast Guard will assess this matter during the initial hunts and will reconsider the duration of the Moving Exclusionary Zone prior to issuing a final rule.

Some comments asked that the RNA be extended out to three miles, or beyond, even if it overlaps the traffic separation scheme because a wounded whale might flee into this area. The Coast Guard's authority for establishing an RNA ends at three miles under current law. The interim rule does not extend the RNA into the traffic scheme because of countervailing safety concerns raised by interruption of charted international maritime traffic routes. A wounded whale could flee into areas outside the jurisdiction of any possible RNA. To maintain a 360-degree Moving Exclusionary Zone the Makah hunt vessel would have to stay at least 500 yards inside the boundary of the RNA.

Comments were received which asked that the RNA be extended southward to the full breadth of the Makah Tribe's usual and accustomed fishing area at

48°02'15"N. Based on the whaling plan of the Makah Tribe and the location of Coast Guard assets, the RNA will actually cover a smaller area than originally proposed in the NPRM. Because the Makah have indicated that whale strikes will commence west of line drawn between Tatoosh Island and Bonilla Point, the interim rule moves the RNA line further west to 124°34'W. Because the Coast Guard's primary rescue and law enforcement assets for this operation are located at Station Neah Bay, the RNA's southern border is being moved north to a line drawn west from the Point of Arches (at 48°15'N).

Several comments objected to the taxpayer expense involved in implementing this rule. Some suggested that the costs associated with enforcement of the RNA be borne by the Makah Tribe, not with federal funds. RNA's, safety zones and limited access areas nationwide are enforced using the Coast Guard's operating expense account. For example, a city fire works display often requires a safety zone around it and federal funds are expended in implementing and enforcing such zones. Moreover, the creation of an RNA does not require that the Coast Guard be on scene for the rule to be in effect; the Coast Guard has the discretion to place units on scene with or without a rule.

Comments were received which requested that the burden of safety be shifted to those choosing to shoot the rifle. Unsafe use of a rifle at sea may give rise to criminal or civil law remedies; the time, place, and manner of the whale hunt is being monitored by other agencies.

One comment indicated that the RNA was blatantly racist because only tribal members are allowed to hunt whales. The tribal treaty whaling rights of the Makah permit whale hunting by members of the tribe only.

A comment stated that the proposed rule violates the constitutional prohibition on bills of attainder. This is not the case; violations of this rule can result in legal procedures and penalties well accepted as constitutional.

Comments raised a concern that the RNA conflicted with NOAA "requirements" that the hunt not extend east of the Tatoosh-Bonilla line. The Tribe's whaling plan indicates an intent to hunt whales west of the Tatoosh-Bonilla line. The interim rule has moved the RNA boundary within the Strait of Juan de Fuca westward. However, because a wounded whale may travel east once struck, a portion of the RNA still extends east of the Tatoosh-Bonilla line.

Some comments stated that if the Coast Guard was trying to protect bystanders from wounded or pursued whales, the Moving Exclusionary Zone would have been centered around the whale, not the Makah whale hunt vessel. Again, the Coast Guard recommends that mariners keep a distance far greater than 500 yards from whaling activities. Due to an inability to adequately mark a struck whale, the location of a Makah whale hunt vessel is a better Moving Exclusionary Zone indicator. The Makah's whale hunt plan indicates that the hunt vessels will be maneuvering in close proximity to wounded or pursued whales.

Comments suggested that the Moving Exclusionary Zone be limited to a cone emanating from the bow of the hunting canoe because the Makah would only be firing forward off the bow of the canoe. This is an incorrect assumption. The rifle may be pointed in a direction other than forward. Additionally, the canoe is highly maneuverable and may turn faster than vessels in the cone could adjust. Therefore, a circle around the whale hunt vessel is the preferred method for enhancing safety.

Some comments stated that the Government could not prohibit public use of the waterways due to a presumption of danger. Ample statutory authority to implement this rule exists under 33 U.S.C. 1231, 33 CFR Part 165 and other federal law.

Comments expressed a concern that the Moving Exclusionary Zone was not content neutral because Makah tribal members who support the hunt could enter the zone while protestors could not. The Makah Tribe will decide who is involved with the hunt. This is a content neutral rule based on safety, not on the views of the participants.

One comment expressed concern that the Moving Exclusionary Zone could easily overtake smaller, slower craft. Small slow craft are on notice by publication of this rule that they need to maintain heightened vigilance during whaling seasons. If a small craft is overtaken by whaling activities, Federal authorities enforcing the RNA will take appropriate action based on the circumstances involved on a case by case basis in determining what, if any, enforcement actions are appropriate.

Some comments objected to the proposed RNA because it gave the Makah the exclusive right to decide who can enter the Moving Exclusionary Zone and that this was an unlawful delegation of the Coast Guard's law enforcement authority. While the Makah may have several vessels participating in the whale hunt operations within the Moving Exclusionary Zone, the Coast

Guard makes all other determinations regarding presence of vessels in the Moving Exclusionary Zone. Under the interim rule, any vessel not actually involved in whale hunt operations is required to have Coast Guard authorization prior to entering the Moving Exclusionary Zone.

Some comments supported the RNA as drafted.

Discussion of Interim Rule

The interim rule establishes an RNA. The RNA will extend out three nautical miles from shore along the Washington Coast from Point of Arches, then north to Cape Flattery, and then east to 124°34' west longitude. The RNA will extend from shore to the traffic separation scheme where the traffic separation scheme lies closer than three nautical miles from shore. The total area covered by the interim rule is smaller than the area described in the NPRM, and the area of the RNA located within the Olympic National Marine Sanctuary (Sanctuary) has been reduced. The regulation will not affect normal transit or navigation in the RNA except during, and in the immediate vicinity of, a hunt. Within the RNA, an MEZ will surround one Makah whale hunt vessel engaged in whale hunting. Except for Makah whaling vessels, a media pool vessel, and vessels with Coast Guard authority to navigate within the Moving Exclusionary Zone, vessels operating in the RNA during a Makah whale hunt may not enter, and must avoid being overtaken by, the Moving Exclusionary Zone. The interim rule imposes no other restrictions on navigation.

The RNA is being implemented in order to reduce dangers to nearby vessels and persons during Makah whale hunting operations by minimizing the risks from the uncertain movements of a pursued, wounded, or towed whale and from the dangers of high powered rifle fire.

For the duration of each hunt, vessels and persons will be excluded from the column of water from the surface to the seabed within a radius of 500 yards centered on a Makah whale hunt vessel. A single media pool vessel will be allowed to operate within the Moving Exclusionary Zone. All expenses, liabilities and risks associated with operation of the media pool vessel lie with members of the pool and the pool vessel owners and operators. Should more than one media pool notification be received by Coast Guard Public Affairs, an attempt to coordinate the requests will be made.

The activation of the Moving Exclusionary Zone will be signaled by the flying of the international numeral

pennant five (5) from a Makah whale hunt vessel. Only one Makah vessel actually engaged in pursuing, harpooning, shooting, securing, or towing whales is authorized to fly international numeral pennant five (5) within the RNA at any one time. In order for an Moving Exclusionary Zone to take effect, the Makah Tribe must notify mariners regarding the activation of the Moving Exclusionary Zone by means of a SECURITE broadcast made at half-hour intervals on channel 16 VHF-FM beginning at least one hour before each hunt. The Moving Exclusionary Zone is only active while whaling operations are ongoing and the international numeral pennant five (5) is flown.

Vessels not actually involved in whale hunt operations are required to have Coast Guard authorization prior to entering the Moving Exclusionary Zone.

Regulatory Evaluation

Although some public comments stated that this action constitutes a significant regulatory action, the Coast Guard disagrees based on controlling law, the minor portion of the navigable waters affected, and the brief time actual whale hunt operations involve. This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department Transportation (DOT) (44 FR 11040; February 26, 1979). Because of the limited number of whales that can be taken annually and the small size of the Moving Exclusionary Zone, the Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Several comments were received stating that the impact on small entities had not been quantified. Some of these comments indicated that both the media as an economic entity and recreational fishing vessels would be harmed by this rule. One comment stated that Mexican businesses would be adversely affected by whale hunting. The media will be allowed to document the hunt using a media pool vessel. Small entities and recreational vessels such as fishing vessels and whale watching boats need to maintain prudent distances from whale hunts as a safety precaution

whether this rule exists or not. As discussed above, the Coast Guard recommends that all mariners, including small entities, maintain a distance well in excess of 500 yards during whale hunt activities.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this interim rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include 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.

Small entities that might be affected could include whale-watching ventures, tugboats and their tows, small passenger vessels, and commercial fishermen. The very small size and duration of the Moving Exclusionary Zone minimizes the effects, if any from this rule on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this interim rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this interim rule will economically affect it.

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

A public comment stated a belief that the Makah would be allowed to determine the boundaries of the RNA, and therefore a Federalism Assessment is necessary. The Coast Guard has determined the size of the RNA, not the tribe. Whale hunt locations are determined by the Makah tribe and their treaty with the U.S.; the hunts could occur within or outside the RNA. The Makah tribe has asked for an RNA larger than that stated in this rule. One of the primary missions of the Coast Guard is to enhance safety at sea, and this action does not interfere with local authority. This rule does not raise Federalism concerns.

The Coast Guard has analyzed this interim rule under the principles and criteria contained in Executive Order 12612 and has determined that this

interim rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

Some public comments stated that the proposed rule would violate NEPA. The Coast Guard considered comments that raised environmental concerns with the application of a categorical exclusion. The Coast Guard has reviewed its determination, and concluded that this regulation is properly categorically excluded. The Coast Guard considered the potential environmental impacts of this interim rule and concluded that there were no potential effects that preclude application of the categorical exclusion found at figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C. The "Categorical Exclusion Determination" is available in the docket for inspection or copying as indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

Interim Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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. Add § 165.1310 to read as follows:

§ 165.1310 Strait of Juan de Fuca and adjacent coastal waters of Northwest Washington; Makah Whale Hunting—Regulated Navigation Area.

(a) The following area is a Regulated Navigation Area (RNA): From 48°10.0' N, 124°42.1' W northward along the mainland shoreline of Washington State to Cape Flattery and thence eastward along the mainland shoreline of Washington State to 48°22' N, 124°34' W; thence due north to 48°24.5' N, 124°34' W; thence northwesterly to 48°27.1' N, 124°41.8' W; thence due west to 48°27.1' N, 124°45.5' W; thence southwesterly to 48°22.7' N, 124°49.3' W; thence southerly along the three nautical mile line to 48°15' N, 124°47.6' W; thence due east back to the shoreline of Washington at 48°15' N, 124°42.1' W. Datum: NAD 1983.

(b) During a whale hunt, while the international numeral pennant five (5) is flown by a Makah whale hunt vessel,

the following area within the RNA is a Moving Exclusion Zone: The column of water from the surface to the seabed with a radius of 500 yards centered on the Makah whale hunt vessel displaying international numeral pennant five (5). This Moving Exclusionary Zone is activated only when surface visibility exceeds one nautical mile, between sunrise and sunset, and the Makah whale hunt vessel displays the international numeral pennant five (5). The Moving Exclusionary Zone is deactivated upon sunset, visibility is reduced to less than one nautical mile, or when the Makah hunt vessel strikes international numeral pennant five (5).

(c) Unless otherwise authorized by the Commander, Thirteenth Coast Guard District or his or her representative, no person or vessel may enter the active Moving Exclusionary Zone except for:

(1) Authorized Makah whale hunt vessel actively engaged in hunting operations under direction of the master of the Makah vessel flying international numeral pennant five (5), and

(2) A single authorized media pool vessel operating in accordance with paragraph (f) of this section.

(d) The international numeral pennant five (5) is only authorized to be displayed from one Makah whale hunt vessel during actual whale hunt operations. No other vessels may display this pennant within the RNA at any time. Whale hunt operations commence when a whale hunt vessel is underway and its master intends to have a whale killed during the voyage. Whale hunt operations cease once this intent is abandoned, a whale is landed, or when the international numeral pennant five (5) is struck.

(e) The Makah Tribe shall make SECURITE Broadcasts beginning one hour before the commencement of a hunt and every half hour thereafter until hunting activities are concluded. This broadcast shall be made on channel 16 VHF-FM and state:

A whale hunt is proceeding today within the Regulated Navigation Area established for Makah whaling activities. The (name of vessel) is a (color and description of vessel) and will be flying international numeral pennant five (5) while engaged in whaling operations. This pennant is yellow and blue in color. Mariners are required by federal regulations to stay 500 yards away from (name of vessel), and are strongly urged to remain even further away from whale hunt activities as an additional safety measure.

(f)(1) Credentialed members of the media interested in entering the Moving Exclusionary Zone may request permission to operate a single media vessel in the Moving Exclusionary Zone by telephoning Coast Guard Public

Affairs, as soon as practicable at (206) 220-7237 during normal working hours, and (206) 220-7001 after hours. Coast Guard preauthorization is required prior to entry into the Moving Exclusionary Zone by a single media pool vessel.

(2) The media pool vessel must be a U.S. documented vessel. The media pool vessel must be under command at all times within the Moving Exclusionary zone by a master licensed in the U.S. to carry passenger for hire. All expenses, liabilities and risks associated with operation of the media pool vessel lie with members of the pool and the pool vessel owners and operators.

(3) The master of the media pool vessel shall maneuver to avoid positioning the pool vessel between whales and hunt vessel(s), out of the line of fire, at a prudent distance and location relative to whale hunt operations, and in a manner that avoids hindering the hunt or path of the whale in any way.

(4) Although permitted to maneuver within the Moving Exclusionary Zone, personnel aboard the media pool vessel are still required to follow safety and law enforcement related instructions of Coast Guard personnel.

Dated: September 24, 1998.

Paul M. Blainey,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 980713170-8247-02]

RIN 0651-AA96

Revision of Patent Fees for Fiscal Year 1999

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; Delay of effective date.

SUMMARY: The Patent and Trademark Office (PTO) published a final rule in the **Federal Register** of July 24, 1998, that revised certain patent fee amounts for fiscal year 1999. Since then, a continuing resolution appropriations bill has been passed by the Congress and signed by the President. The continuing resolution maintains patent fees at their September 1998 (fiscal year 1998) rates through October 9, 1998. This document delays the effective date