
DEPARTMENT OF HOMELAND SECURITY
Coast Guard**33 CFR Part 165**

[Docket No. USCG–2009–0277]

RIN 1625-AA00

**Safety Zone; San Clemente 3 NM
Safety Zone, San Clemente Island, CA**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around San Clemente Island in support of potentially hazardous military training and testing exercises. The existing zones do not sufficiently overlap potential danger zones and testing areas used by the Navy during live-fire and ocean research operations resulting in a delay or cancellation of these operations. The new safety zone will protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

DATES: This rule is effective June 21, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0277 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0277 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying

at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail Corey.R.McDonald@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On August 7, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; San Clemente Island, CA in the **Federal Register** (74 FR 39584). We received one comment on the proposed rule.

Basis and Purpose

As part of the Southern California Range Complex, San Clemente Island (SCI) and the surrounding littoral waters support the training requirements for the U.S. Pacific Fleet, Fleet Marine Forces Pacific, Naval Special Warfare Command, Naval Expeditionary Combat Command and other military training and research units. In 1934, Executive Order 6897 transferred full ownership of SCI from the Department of Commerce to the Department of the Navy for “naval purposes”. The San Clemente Island Range Complex (SCIRC) has the capability to support training in all warfare areas including Undersea Warfare, Surface Warfare, Mine Warfare, Strike Warfare, Air Warfare, Amphibious Warfare, Command and Control, and Naval Special Warfare. It is the only location in the United States

that supports Naval Special Warfare full-mission training profiles. The Shore Bombardment Area (SHOBA) is the only range in the United States where expeditionary fire support exercises utilizing ship to shore naval gunfire can be conducted. SCI’s unique coastal topography, proximity to the major Fleet and Marine concentration areas in San Diego County, supporting infrastructure, and exclusive Navy ownership make the island and surrounding waters vitally important for fleet training, weapon and electronic systems testing, and research and development activities.

Background

In the 2009 NPRM, the Coast Guard proposed to establish a permanent safety zone in the area of San Clemente Island in order to conduct training essential to successful accomplishments of U.S. Navy missions relating to military operations and national security. We proposed to establish a safety zone consisting of 8 segments, which were described in the NPRM as Sections (A) through (G) and Wilson Cove. We believe that a safety zone is necessary to protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. This was a joint statement from three commercial fishing organizations: the Sea Urchin Commission (CSUC), the California Lobster and Trap Fishermen’s Association (CLTFA), and the Point Conception Ground Fishermen’s Association (PCGA), and is available in the docket. The commenters joined together to express their support for the Navy training missions associated with San Clemente Island, including the use of safety zones and permanent closures at Special Warfare Training Area 1

(SWAT 1) and Wilson Cove. However, the fishing organizations also expressed concern that some issues were not adequately addressed and some information in the administrative record may not be factually accurate.

The commenters raised several issues that will be addressed below. First, they argued that the socio-economic impacts of the proposed safety zone were more substantial than the Coast Guard had estimated, because section "G" contains important fishing areas and is also important to chartered passenger vessels. Second, the commenters requested that section "F" was too broad, and should be subdivided into smaller areas. Third, the commenters stated that it is important to keep the North West Harbor open to the public, due to the need for safe anchorages for small boats.

In light of these concerns, the comment included the following requests:

1. Re-assess the socio-economic impacts of permanent closures in Sections 'G' and Wilson Cove and the socio-economic impacts of intermittent closures in Sections 'A' & 'F' on charter passenger vessels, seiners, and individual sport fishermen in light of other regional closures proposed under the State's Marine Life Protection Act (MLPA) process.

2. Convene two workshops (between January—March 2010) with representatives from DoD, U.S. Coast Guard, and fishing groups to: (a) Review Section F configuration and (b) develop a protocol that affords public access to Northwest Harbor during time periods the area is not scheduled for military training. Implement Final Rule no later than June 1, 2010.

Response:

Many of the issues raised by the three commercial fishing organizations are addressed in the Southern California (SOCAL) Environmental Impact Statement (EIS)/Overseas EIS (OEIS) (Record of Decision, January 30, 2009) (74 FR 5650). The entire document is also available on the Web at <http://www.socalcomplexeis.com>. The SOCAL EIS/OEIS included a socio-economic assessment of increased naval activities around San Clemente Island. The current rulemaking establishing a safety zone around San Clemente Island is part of the Navy's continued efforts to protect the public from potentially hazardous training evolutions assessed in the SOCAL EIS/OEIS, while supporting Department of Defense training range requirements.

Implementation of the Proposed Action in the SOCAL EIS/OEIS increased the overall number of training

evolutions by 24 percent. Enforcement of the safety zone during these increased training periods is necessary to protect persons and vessels transiting through the area. A public safety determination was made to establish a safety zone around San Clemente Island to protect the public from potentially hazardous training evolutions while still facilitating the public's use of offshore waters during times when hazardous training was not scheduled. The safety zone provides exclusive use by the military to certain offshore waters around San Clemente Island. The EIS/OEIS concluded that "the increased training tempo associated with [an] increase in range clearance [restricted public access] will not cause a considerable [socioeconomic] impact due to advanced public notification and [the] primarily short-term duration of military activities" (SOCAL EIS/OEIS, 2009).

1. Socio-Economic Impacts

One argument made by the commenters was that the agency had not considered the socio-economic impacts of the safety zone. In response, we note that the socio-economic impacts associated with restricted public access to offshore waters during hazardous training evolutions were assessed in detail in two recent documents and considered prior to initiating the safety zone rulemaking process, both of which are available on the Web at <http://www.socalcomplexeis.com>:

- Southern California (SOCAL) Environmental Impact Statement (EIS)/Overseas EIS (OEIS) (January 2009), Section 3.14 Socioeconomics.
- Southern California (SOCAL) Fisheries Study: Catch Statistics (2002–2007), Fishing Access, and Fishermen Perception (February 2009).

The Navy recognizes the importance of the waters around San Clemente Island to commercial and recreational fishermen, and contrary to the commenters' assertion, careful analysis of the socio-economic impact of the increased training activity was undertaken in these documents. In order to mitigate the economic and social impacts of its training exercises, the Navy has gone to great lengths to provide advanced notice of these exercises to fishermen and operators of recreational vehicles. In response to recommendations expressed by fishermen during the San Clemente Island Range Complex EIS/OEIS scoping meetings for advanced knowledge of operations scheduled around San Clemente Island, the Navy developed (2000) and maintains a public Web site (<http://www.scisland.org>). The Web site

publishes scheduled training times and locations up to six months in advance. Fishermen can utilize this Web site, in conjunction with other notification methods, including NOTMARS and Very High Frequency (VHF) radio Channel 16, to plan their trips near San Clemente Island.

The Navy also sponsored a detailed survey to examine fishing concerns in SOCAL. The *Southern California (SOCAL) Fisheries Study: Catch Statistics (2002–2007), Fishing Access, And Fishermen Perception* (February 2009) focused on two goals:

- Determine the potential impact of Navy activities on commercial and recreational fishing in the SOCAL Range Complex.
- Examine potential use-conflicts, particularly in the waters around San Clemente Island.

The study highlighted the importance of the waters around San Clemente Island to commercial and recreational fishermen particularly for spiny lobster, swordfish, red urchin, Pacific sardine and market squid. Overall, fishermen agreed that a combination of regularly scheduled radio announcements, a clear and regularly updated Web site, and easily obtainable and reliable contact information with assured rapid response would serve to mitigate conflicts between fishermen and the Navy within the SOCAL Range Complex. As a result of this study, the Navy is working on improvements to the San Clemente Island Web site: adding operating areas and altitude acronyms/codes and clarifying whether a Navy activity requires a closure to fishing grounds or if fishing is still permitted in conjunction with scheduled training events.

For these reasons, we believe that the economic and social impacts regarding implementation of the safety zones will be minimal. While extending the safety zone will cause some inconvenience, we believe that it is needed for the protection of both vessels and persons, and that the negative socio-economic effects of the zone are far outweighed by the safety need.

2. Additional Workshops

Over the past two years, the Navy has conducted extensive public outreach concerning increased training evolutions in Southern California: public meetings and comment periods were held in conjunction with the SOCAL EIS/OEIS; outreach efforts were conducted with local fishing organizations; and Department of Defense representatives served as members of the Marine Life Protection

Act South Coast Regional Stakeholder Group.

The Navy has a longstanding appreciation of the economic importance of San Clemente Island to commercial and recreational fishermen and divers, so in an effort to ensure public safety while optimizing the public's access to offshore waters, the Navy sub-divided the Safety Zone into eight separate sections. If the Safety Zone had been managed as one contiguous zone, a scheduled training evolution off the southern end of San Clemente Island would have restricted public access to all offshore areas around San Clemente Island. The segmented configuration facilitates the public's access to areas not scheduled for hazardous training, while ensuring continued use of the waters around San Clemente Island for critical naval training.

Safety Zone 'F'

As stated above, commenters argued that section "F" of the safety zone was too broad, and that it should be broken up into various subzones. However, the commenters did not make any recommendations as to what these smaller subzones should be. Furthermore, we note that boundaries of all Safety Zone segments, including Section 'F', were developed in accordance with training requirements and the public's continued access to safe harbor. Specifically, section 'F' boundaries are consistent with the surface danger zone (SDZ) associated with the live fire Naval Special Warfare (NSW) range designated as Training Area and Range (TAR) 10 (SOCAL EIS/OEIS, 2009). Section 'F' also overlaps the existing Restricted Area (No Anchorage) area (West Cove) depicted in the Coast Pilot since 1985. This is designated as a No Anchor area because trunk cables from the critical deepwater instrumented hydrophone array come ashore in West Cove. Given these facts, we have decided to maintain the boundaries of the current segment "F" as proposed in the NPRM.

Northwest Harbor Anchoring

The Navy recognizes the importance of retaining the public's access to safe harbors located around San Clemente Island. As documented in the SOCAL Fisheries Study (2009), "Maintaining access to public anchorages around SCI, particularly Pyramid Cove and Northwest Harbor, is critical for the safety of the fishermen, as well as for ensuring that fishermen are not subjected to increased fuel costs as a result of relocation." The safety zone was configured such that Northwest

Harbor and Pyramid Cove would be accessible to the public except during scheduled, hazardous training events. The new safety zone does not alter the public's use of Wilson Cove for safe harbor because a permanent Security Zone restricting public access has existed in Wilson Cove (out to 2 nm offshore) for many years. In addition, neither of the two permanently restricted areas overlaps Northwest Harbor or Pyramid Cove.

Coordination With Commercial Fishing Organizations

We also note that there has been substantial coordination with local fishing organizations throughout the process of developing plans for this area. During a coordination meeting held in early 2009 with representatives from various fishing organizations (including commercial fishing associations submitting comments on the Safety Zone Notice of Proposed Rule Making), the Navy briefed the Safety Zone proposal. The California Sea Urchin Commission (CSUC) recommended that the Navy assess the feasibility of facilitating safe transit through SWAT 1 during times when the range may be cold. Consequently, the Navy spent considerable time and resources to establish a permanent watch stander and dedicated call sign (KRAKEN on Channel 82A) that boaters can contact to request safe vessel transit authorization through SWAT 1 Safety Zone. When authorized by KRAKEN, vessels may safely transit within 3nm of the northern end of San Clemente Island, thereby saving time and fuel costs, a related concern raised in the commenters' letter.

Conclusion

The Southern California Range Complex is the most capable and heavily used Navy Range Complex in the eastern Pacific region. San Clemente Island is the tactical cornerstone of the Range Complex. The Navy has assessed the socio-economic effects of conducting training operations in Southern California (including San Clemente Island) and conducted extensive public outreach. As described in the SOCAL EIS/OEIS, the Navy is expanding training evolutions in Southern California. The Navy recognizes and appreciates the importance of the waters around San Clemente Island to commercial and recreational fishermen and has exerted substantial effort to successfully co-exist with commercial and recreational neighbors. The Navy will continue to provide the public with up-to-date, accurate information on areas accessible

for the public's commercial and recreational uses.

Discussion of Rule

The Coast Guard is establishing a permanent safety zone around San Clemente Island for the U.S. Navy. The limits of the segmented safety zone range from high tide seaward 3 NM. The zone is broken down into the following sections:

(a) Section A

Beginning at 33°02.05' N, 118°35.85' W; thence to 33°04.93' N, 118°37.07' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 33°02.82' N, 118°30.65' W; thence to 33°17.28' N, 118°33.88' W; thence along the shoreline returning to 33°02.05' N, 118°35.85' W.

(b) Section B

Beginning at 32°57.30' N, 118°30.88' W; thence to 32°59.60' N, 118°28.33' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°55.83' N, 118°24.22' W; thence to 32°53.53' N, 118°26.52' W; thence along the shoreline returning to 32°57.30' N, 118°30.88' W.

(c) Section C

Beginning at 32°53.53' N, 118°26.52' W; thence to 32°55.83' N, 118°24.22' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°47.27' N, 118°18.23' W; thence to 32°49.10' N, 118°21.05' W; thence along the shoreline returning to 32°53.53' N, 118°26.52' W.

(d) Section D

Beginning at 32°49.10' N, 118°21.05' W; thence to 32°47.27' N, 118°18.23' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°48.38' N, 118°31.69' W; thence to 32°50.70' N, 118°29.37' W; thence along the shoreline returning to 32°49.10' N, 118°21.05' W.

(e) Section E

Beginning at 32°50.70' N, 118°29.37' W; thence to 32°48.05' N, 118°31.68' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°53.62' N, 118°35.93' W; thence to 32°56.13' N, 118°32.95' W; thence along the shoreline returning to 32°50.70' N, 118°29.37' W.

(f) Section F

Beginning at 32°56.13' N, 118°32.95' W; thence to 32°53.62' N, 118°35.93' W;

thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.95' N, 118°39.77' W; thence to 33°01.08' N, 118°36.33' W; thence along the shoreline returning to 32°56.13' N, 118°32.95' W.

(g) *Section G*

Beginning at 33°01.08' N, 118°36.33' W; thence to 32°59.95' N, 118°39.77' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 33°04.93' N, 118°37.07' W; thence to 33°02.05' N, 118°35.85' W; thence along the shoreline returning to 33°01.08' N, 118°36.33' W.

(h) *Wilson Cove*

Beginning at 33°01.28' N, 118°33.88' W; thence to 33°02.82' N, 118°30.65' W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.60' N, 118°28.33' W; thence to 32°57.30' N, 118°30.88' W; thence along the shoreline returning to 33°01.28' N, 118°33.88' W.

Mariners requesting permission to transit through Section G must request authorization from the Fleet Area Control and Surveillance Facility (FACSFAC) San Diego by hailing KRAKEN (dedicated call sign) on VHF bridge-to-bridge radio connection on Channel 16 or calling 619-545-4742 or 619-545-1742. Once vessel has established contact with KRAKEN on Channel 16, vessel will be asked to switch to Channel 82A. Vessel will be asked to provide the following information: Name of vessel and registration number, name of Captain and homeport, military or non-military designation, current location (latitude/longitude), date and time, and projected transit time through Section G.

VESSELS MUST HAVE AUTHORIZATION FROM KRAKEN TO TRANSIT WITHIN 3NM OF SAN CLEMENTE ISLAND THROUGH SECTION G. No other non-military activities are permitted in Section G at any time. If vessel does not receive authorization to transit through Section G, mariner must navigate to greater than 3nm offshore San Clemente Island. Immediately upon completing transit, vessel operator must promptly notify KRAKEN of safe passage through Section G safety zone. Failure to expeditiously notify KRAKEN of passage through the safety zone will result in a determination by the Navy that the vessel is still in the safety zone, thereby restricting the use of the area for naval operations. If the Navy determines that facilitating safe transit through the

zone negatively impacts range operations, the Navy will cease this practice and enforce the safety zone without exception.

Mariners are restricted at all times from transiting into the Safety Zone/ Security Zone extending from shoreline in Wilson Cove to 2nm offshore. However, mariners may transit through the Safety Zone extending from 2nm to 3nm offshore unless asked by the Navy to transit outside the Wilson Cove Safety Zone. Transit only is permitted in this area.

Mariners who wish to transit through any of the other six sections (A, B, C, D, E, and/or F) will also be required to request permission from FACSFAC San Diego, using the same procedure described above, except during periods when the Navy is not conducting potentially hazardous military training or testing activity. Mariners will be able to transit some or all of these sections without obtaining prior authorization from FACSFAC San Diego only when the Coast Guard notifies the public that enforcement of the zone in specified sections is temporarily suspended.

Notice of suspended enforcement will be provided through broadcast notice to mariners and publication in the local notice to mariners; and the schedule of restricted access periods by date, location and duration will continue to be proposed at <http://www.scisland.org>.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the fact that the majority of the proposed safety zone will be open a significant portion of the time. The safety zone will be divided into eight sections. Two of the sections, specifically Section G and Wilson Cove, will be continually enforced as a Safety Zone, thereby restricting public use of these offshore waters, although transit through Section G and parts of Wilson Cove will be permitted at times. The other six

sections (A, B, C, D, E, and F) will be enforced for the Navy's exclusive use only during potentially hazardous military training or testing activity. The schedule of restricted access periods by date, location and duration will continue to be posted at <http://www.scisland.org>. Prior to the use of sections A thru F, the Navy will inform U.S. Coast Guard Sector San Diego.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 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.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Pacific Ocean around San Clemente Island.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Except for Section G and Wilson Cove, which will be continually enforced, the safety zone will be activated, and thus subject to enforcement, only during naval training and testing exercises. During periods when portions of the safety zone are enforced in sections A through F, vessel traffic can pass safely around the safety zone. When the safety zone is not enforced, vessel traffic will be allowed to use the offshore waters for commercial and recreational activities. Permission for safe vessel transit through the permanently restricted safety zones designated Section G and Wilson Cove may be requested of the Fleet Area Control and Surveillance Facility, San Diego. Furthermore, the safety zones will not impede access to safe port areas, important to small boats, such as North West Harbor or Pyramid Cove, as discussed above.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects

on them and participate in the rulemaking process.

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.

Collection of Information

This rule calls for no new collection of information 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 (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.

Taking of Private Property

This rule will not cause 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.2.

■ 2. Add § 165.1141 to read as follows:

§ 165.1141 Safety Zone; San Clemente 3 NM Safety Zone, San Clemente Island, CA.

(a) *Location*. The following area is a safety zone: All waters of the Pacific Ocean surrounding San Clemente Island, from surface to bottom, extending from the high tide line on the island seaward 3 NM. The zone consists of the following sections (*see* Figure 1):

(1) Section A

Beginning at 33°02.05' N, 118°35.85' W; thence to 33°04.93' N, 118°37.07' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 33°02.82' N, 118°30.65' W; thence 33°01.29' N, 118°33.88' W; thence along the shoreline returning to 33°02.05' N, 118°35.85' W.

(2) Section B

Beginning at 32°57.30' N, 118°30.88' W; thence to 32°59.60' N, 118°28.33' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°55.83' N, 118°24.22' W; thence to 32°53.53' N,

118°26.52' W; thence along the shoreline returning to 32°57.30' N, 118°30.88' W.

(3) *Section C*

Beginning at 32°53.53' N, 118°26.52' W; thence to 32°55.83' N, 118°24.22' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°47.27' N, 118°18.23' W; thence to 32°49.10' N, 118°21.05' W; thence along the shoreline returning to 32°53.53' N, 118°26.52' W.

(4) *Section D*

Beginning at 32°49.10' N, 118°21.05' W; thence to 32°47.27' N, 118°18.23' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°48.38' N, 118°31.69' W; thence to 32°50.70' N, 118°29.37' W; thence along the

shoreline returning to 32°49.10' N, 118°21.05' W.

(5) *Section E*

Beginning at 32°50.70' N, 118°29.37' W; thence to 32°48.05' N, 118°31.68' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°53.62' N, 118°35.93' W; thence to 32°56.13' N, 118°32.95' W; thence along the shoreline returning to 32°50.70' N, 118°29.37' W.

(6) *Section F*

Beginning at 32°56.13' N, 118°32.95' W; thence to 32°53.62' N, 118°35.93' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°59.95' N, 118°39.77' W; thence to 33°01.08' N, 118°36.33' W; thence along the

shoreline returning to 32°56.13' N, 118°32.95' W.

(7) *Section G*

Beginning at 33°01.08' N, 118°36.333' W; thence to 32°59.95' N, 118°39.77' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 33°04.93' N, 118°37.07' W; thence to 33°02.05' N, 118°35.85' W; along the shoreline returning to 33°01.08' N, 118°36.33' W.

(8) *Wilson Cove*

Beginning at 33°01.28' N, 118°33.88' W; thence to 33°02.82' N, 118°30.65' W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°59.60' N, 118°28.33' W; thence to 32°57.30' N, 118°30.88' W; thence along the shoreline returning to 33°01.28' N, 118°33.88' W.

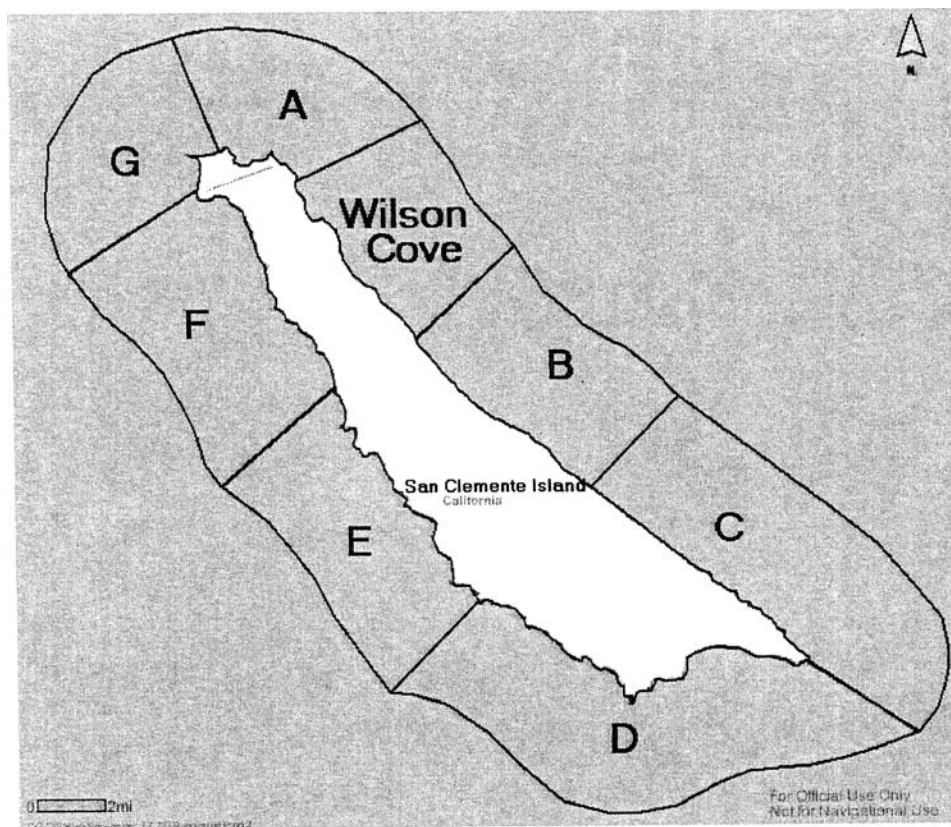


Figure 1. San Clemente Island Safety Zone Configuration

(b) *Definitions.* The following definition applies to this section: designated representative, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels who have been

authorized to act on the behalf of the Captain of the Port (COTP).

(c) *Enforcement.* (1) This regulation will be enforced at all times in Section G and the Wilson Cove section of the safety zone described in paragraph (a) of this section. Mariners must obtain permission in accordance with the

procedure described in paragraph (d)(2) of this section before entering either of those sections (paragraphs (a)(7) and (8)).

(2) This regulation will be enforced in Sections A through F of the safety zone described in paragraphs (a)(1) through (6) of this section except when the Coast

Guard notifies the public that enforcement of the zone in specified sections is temporarily suspended. Mariners need not obtain permission in accordance with the procedure described in paragraph (d)(2) of this section to enter a zone section in which enforcement is temporarily suspended. At all other times, mariners must obtain permission in accordance with the procedure described in paragraph (d)(2) before entering any of those sections.

(3) The COTP will provide notice of suspended enforcement by means appropriate to effect the widest publicity, including broadcast notice to mariners, publication in the local notice to mariners, and posting the schedule of restricted access periods by date, location and duration at <http://www.scisland.org>.

(d) *Regulations.* (1) The general regulations governing safety zones found in 33 CFR 165.23 apply to the safety zone described in paragraph (a) of this section.

(2) Mariners requesting permission to transit through any section of the zone may request authorization to do so from the Fleet Area Control and Surveillance Facility (FACSFAC) San Diego by either calling 619-545-4742 or establishing a VHF bridge to bridge radio connection on Channel 16. Immediately upon completing transit, the vessel operator must promptly notify the FACSFAC of safe passage through the safety zone. Failure to expeditiously notify FACSFAC of passage through the safety zone will result in a determination by the Navy that the vessel is still in the safety zone, thereby restricting the use of the area for naval operations. If the Navy determines that facilitating safe transit through the zone negatively impacts range operations, the Navy will cease this practice and enforce the safety zones in these two areas without exception.

(3) All persons and vessels must comply with the instructions of the U.S. Navy, Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Navy or U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

Dated: April 22, 2010.

T. H. Farris,
Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010-12063 Filed 5-19-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0389]

RIN 1625-AA00

Safety Zone; Washington State Department of Transportation Ferries Division Marine Rescue Response (M2R) Full-Scale Exercise for a Mass Rescue Incident (MRI)

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Washington State Department of Transportation Ferries Division (WSF) is conducting a Marine Rescue Response (M2R) full-scale exercise in Port Madison. This training exercise will simulate a mass rescue incident (MRI) and will involve an abandon ship scenario with multiple response vessels. This temporary safety zone is necessary to ensure the safety of the participating ferries, rescue vessels, and the maritime public during the exercise by prohibiting any vessel operators from entering or remaining within a 500-yard radius of the participating ferries unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective from 8 a.m. until 11:59 p.m. on 25 May 2010, unless cancelled sooner by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0389 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0389 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Rebecca E. McCann, Sector Seattle, Waterways Management Division, Coast Guard;

telephone 206-217-6088, e-mail Rebecca.E.McCann@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of life and property on navigable waters.

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**. Delaying the effective date would be contrary to the public interest because hazards associated with large scale training exercises could lead to severe injury, fatalities and/or destruction of public property. Therefore immediate action is necessary to ensure safety of the public and of participants in the WSF M2R exercise.

Basis and Purpose

The WSF is hosting a M2R full scale exercise which will simulate a MRI to provide training in specific emergency response procedures. The exercise will test WSF procedures, and establish protocols with the response organization specific to ferries in the Puget Sound area. This temporary safety zone will mitigate navigation and safety concerns that may arise from the exercise by restricting the area and keeping any transiting vessels from interfering.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone within Port Madison, Washington. This safety zone is established to prohibit any vessel operator from entering or remaining within 500 yards of the ferries participating in the WSF M2R exercise, unless authorized by the Captain of the Port, Puget Sound or Designated Representative. The simulation involves one large ferry dead in the water (DIW),