

1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Temporarily add § 165.T11–021 to read as follows:

§ 165.T11–021 Safety Zone: Middle River, San Joaquin County, California.

(a) *Location.* The navigable waters of the Middle River, located within the area bounded on the north by the Santa Fe Cut Canal, on the south by the entrance of the Woodward Cut Canal, on the east by the Upper Jones Tract, and on the west by the eastern edge of Woodward Island.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) Persons desiring to transit the area of a safety zone may contact the Captain of the Port at telephone number 415–399–3547 or his designated representative on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* U.S. Coast Guard personnel and San Joaquin County Sheriff personnel will enforce this safety zone and may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representatives. Upon being hailed by enforcement personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective period.* This safety zone is effective from 12:30 p.m. (PDT) on June 12, 2004, until 5 p.m. (PDT) on July 12, 2004.

Dated: June 12, 2004.

Gerald M. Swanson,

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

[FR Doc. 04–14563 Filed 6–25–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–105]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Bogue Sound, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Marine Corps Base Camp Lejeune, NC. Naval gunfire will be conducted crossing the AIWW from offshore in the vicinity of the N–1/BT3 impact area and impacting areas in Camp Lejeune. This safety zone is needed to ensure the safety of persons and vessels operating on the AIWW in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

DATES: This rule is effective from 8 a.m. on June 07, 2004, until 8 a.m. on July 16, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–105 and are available for inspection or copying at Coast Guard Marine Safety Office Wilmington, 721 Medical Center Drive, Wilmington, NC 28401 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Charles A. Roskam II, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2200 or toll free (877) 229–0770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication are not required for this regulation.

Additionally, publishing an NPRM and delaying the effective date of this

rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public and required to ensure the safety of persons and vessels operating on the AIWW in the specified area at the specified times when the naval gunfire will be conducted crossing the AIWW.

Background and Purpose

Naval gunfire operations will be conducted crossing the AIWW from offshore on the Atlantic Ocean in the vicinity of the N–1/BT3 impact area and impacting areas in Camp Lejeune from 8 a.m. on June 04, 2004, until 8 a.m. on July 16, 2004. This safety zone will be in effect to ensure the safety of persons and vessels operating on the AIWW in this area.

Discussion of Rule

The safety zone will cover all waters of the AIWW, from bank to bank, extending from Bogue Sound-New River Daybeacon 58 (LLNR 39210) southeast to Bogue Sound-New River Light 64 (LLNR 39230) during periods of naval gunfire operations. Projectiles from the gunfire operations will travel across the AIWW to the impact area on Camp Lejeune. This safety zone will be in effect to ensure the safety of persons and vessels operating on the AIWW in this area. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard or U.S. Navy vessel will patrol each end of the safety zone to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

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 Homeland Security (DHS). This rule only affects a small portion, less than two miles, of the AIWW in North Carolina for a limited time. The proposed regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

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 would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the AIWW from 8 a.m. on June 04, 2004 until 8 a.m. on July 16, 2004. The Coast Guard expects a minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AIWW.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), 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 Entities requesting guidance or exemption from this rule may contact LCDR Charles A. Roskam II, Chief Port Operations, USCG Marine Safety Office Wilmington at (910) 772-2200 or toll free (877) 229-0770.

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 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would 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 would 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 would 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 Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "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 record keeping 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; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–105 to read as follows:

§ 165.T05–105 Safety zone; Atlantic Intracoastal Waterway, Bogue Sound, NC.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Intracoastal Waterway, extending from Bogue Sound-New River Daybeacon 58 (LLNR 39210) southeast to Bogue Sound-New River Light 64 (LLNR 39230), Nautical Chart 11541, Intracoastal Waterway-NC-Neuse River to Myrtle Grove Sound.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Wilmington, North Carolina, or any Coast Guard Commissioned, Warrant, or Petty Officer who has been authorized by the Captain of the Port to act on his/her behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port. All vessel movement within the safety zone will be prohibited except as specifically authorized by the Captain of the Port. The general requirements of § 165.23 also apply to this regulation.

(2) Red warning flags or red warning lights will be displayed on towers located at both ends of the safety zone while firing exercises are in progress. The flags or lights will be displayed by 8 a.m. each day that this regulation is in effect, and will be removed at the end of firing exercises.

(3) A Coast Guard or Navy vessel will patrol each end of the safety zone to ensure the public is aware that firing exercises are in progress and that the firing area is clear of vessel traffic before weapons are fired.

(4) Vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port or the Coast Guard or U.S. Navy vessel on-scene. The Captain of the Port can be contacted at telephone number (800) 325–4965. The Coast Guard or U.S. Navy vessel may be contacted by radio on VHF Marine Band Radio, channels 13 (156.65 MHz) and 16 (156.8 MHz)

(d) *Effective period:* This regulation will be enforced from 8 a.m. on June 07, 2004, until 8 a.m. on July 16, 2004.

(e) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: June 7, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustment—Afognak Bay

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management action of closure for the Federal subsistence salmon fisheries in Afognak Bay. This action provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 3, 2004. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2004 regulatory year.

DATES: The Afognak Bay closure is effective June 12, 2004, through August 1, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that

provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100, and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 fishing seasons, harvest limits, and methods and means were published on February 12, 2003 (68 FR 7276). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for