

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0652]

RIN 1625–AA00

Safety Zone; Lyme Community Days, Chaumont Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for Lyme Community Days Fireworks on Chaumont Bay, Lyme, New York. All vessels are prohibited from transiting the zone except as specifically authorized by the Captain of the Port or a designated representative. This action is necessary and intended to ensure safety of life on navigable waters immediately prior to, during, and immediately after the fireworks event.

DATES: This rule is effective from 9:30 p.m. to 10 p.m. on July 24, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0652 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0652 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 MST2 Jessica Seguin, The Marine Events Coordinator, Coast Guard; telephone: 716–843–9353, e-mail: Jessica.L.Seguina@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.” 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 the permit application associated with this event was not received in time and given the risks to the public created by fireworks displays, delaying the publication of this rule would be contrary to the public interest.

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**. The permit application associated with this event was not received in time to provide for a 30 day period before making the rule effective and delaying the effective date would be contrary to the public interest because of the hazards to the public created by fireworks displays.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Buffalo has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of a fireworks display in conjunction with the Lyme Community Days Fireworks. The fireworks display will occur from 9:30 p.m. to 10 p.m. on July 24, 2010. The safety zone will encompass all waters of Chaumont Bay, Lyme, New York in a 210 ft radius from position 44°4’6.03” N and 76°8’54.61” W (DATUM: NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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.

This determination is based on the minimal time that the area will be restricted. The Coast Guard expects this area will have an insignificant adverse impact to mariners from the zones activation.

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 may be small entities: The owners and operators of vessels intending to transit the specified portion of Chaumont Bay, New York from 9:30 p.m. until 10 p.m. on July 24, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only 30 minutes in a low vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories, which include a Local Notice to Mariners and a Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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.ID, 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 that 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 the establishment 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; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 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 § 165.T09-0652 to read as follows:

§ 165.T09-0652 Safety Zone; Lyme Community Days, Chaumont Bay, NY.

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of Chaumont Bay, Lyme, NY in a 210 ft radius from position 44°4'6.03" N and 076°8'54.61" W. (DATUM: NAD 83).

(b) *Enforcement period.* This zone will be enforced from 9:30 p.m. to 10 p.m. on July 3, 2010.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: July 2, 2010.

R.S. Burchell,

Captain, U. S. Coast Guard, Captain of the Port Buffalo.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0912281446-0111-02]

RIN 0648-XX54

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the second seasonal period (July 1 - September 14) is projected to be reached by the effective date of this rule. From the effective date of this rule until September 15, 2010, Pacific sardine can only be harvested as part of the live bait fishery or incidental to other fisheries;

the incidental harvest of Pacific sardine is limited to 30-percent by weight of all fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 am Pacific Daylight Time on date of closure.

DATES: Effective 12:01 am Pacific Daylight Time (PDT) July 22, 2010, through September 14, 2010.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past effort, the directed fishing harvest allocation for the second allocation period (July 1 - September 14) will be reached and therefore directed fishing for Pacific sardine is being closed until September 15, 2010. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 am on the date of closure through September 14, 2010, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 30-percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine

fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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