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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Port Arthur-05-004]

RIN 1625 - AA00

USCG-2005-22002-84

Safety Zone; Sabine Outer Bar Channel Between Buoys "30"
and "34", Sabine, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable channel of the Sabine Outer Bar Channel between buoy "30" and buoy "34". This safety zone is necessary to protect persons, mariners and vessels from the potential safety hazards associated with a potential hazard to navigation and the search and recovery operations necessary to remove this hazard. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port, Port Arthur, or a designated representative.

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DATES: This rule is effective from 2 p.m. CST on April 11, 2005, until 1 p.m. CST on April 13, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Port Arthur-05-⁰⁰⁴~~003~~] and are available for inspection or copying at Marine Safety Office Port Arthur, 2901 Turtle Creek Drive, Port Arthur, Texas, 77642 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Bryan Markland, Marine Safety Office Port Arthur, at (409) 723-6500.

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), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Publishing a NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect persons, mariners and vessels from the hazards associated

with the dive and assist operations of the motor vessel ECE.

Background and Purpose

Sabine Outer Bar Channel lighted buoy "29" is missing and presumed sunk in the vicinity of the Sabine Outer Bar Channel. This aid to navigation presents a potential hazard to navigation to mariners transiting the Sabine Outer Bar Channel. This safety zone is necessary to protect persons, mariners and vessels from the potential safety hazards associated with this hazard to navigation and the search and recovery operations necessary to remove the hazard. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port, Port Arthur, or a designated representative.

Discussion of Rule

The Captain of the Port, Port Arthur is establishing a safety zone for the navigable channel of the Sabine Outer Bar Channel between buoy "30" and buoy "34" during search and recovery operations for missing buoy "29", a potential hazard to navigation. The southern terminus and beginning of the safety zone is at buoy "30" (Light List number 21415) on the Sabine Outer Bar Channel at position 29°38'36" N, 093°19'21" W. The northern terminus and

ending of the safety zone is at buoy "34" (Light List number 21445) on the Sabine Outer Bar Channel at position 29°40'36" N, 093°19'42" W. The safety zone extends the entire width of the Sabine Outer Bar Channel. Entry or movement into or within this zone is prohibited unless specifically authorized by the Captain of the Port, Port Arthur, or a designated representative. Persons or vessels requiring entry into or passage through the safety zone must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or by telephone at (409) 723-6500. This rule is effective from 2 p.m. CST on April 11, 2005, until 1 p.m. CST on April 13, 2005.

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 will only be in effect for a period of 32 hours and notifications to the marine community will be made through a broadcast notice to mariners. The impacts on routine navigation are expected to be moderate. Due to the nature of the situation, a potential hazard to navigation exists in the Sabine Outer Bar Channel and the duration of search and recovery operations is unknown.

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 or operators of towing, deep draft, commercial fishing and recreational vessels intending to transit the Sabine Outer Bar Channel between buoy "30" and

buoy "34" from 2 p.m. CST on April 11, 2005, until 1 p.m. CST on April 13, 2005. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will be in effect for only a short period of time; (2) Recreational and commercial fishing vessels desiring to transit through the safety zone, may request permission from the Captain of the Port or designated representative.

If you are a small business entity and are significantly affected by this regulation please contact LT Bryan Markland, Marine Safety Office Port Arthur, TX at (409) 723-6500.

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 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 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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 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 because this rule is not expected to result in any

significant adverse environmental impact as described in NEPA.

Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

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; 50 U.S.C. 191, 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. A new temporary § 165.T08-052 is added to read as follows:

§ 165.T08-052 Safety Zone; Sabine Outer Bar Channel, Sabine, TX.

(a) Location. The following area is a safety zone: the navigable channel of the Sabine Outer Bar Channel between buoy "30" and buoy "34". The southern terminus and beginning of the safety zone is at buoy "30" (Light List number 21415) on the Sabine Outer Bar Channel at position 29°38'36" N, 093°19'21" W. The northern terminus and ending of the safety zone is at buoy "34" (Light List number 21445) on the Sabine Outer Bar Channel at position 29°40'36" N, 093°19'42" W. The safety zone extends the entire width of the Sabine Outer Bar Channel. These coordinate are based upon [NAD 83].

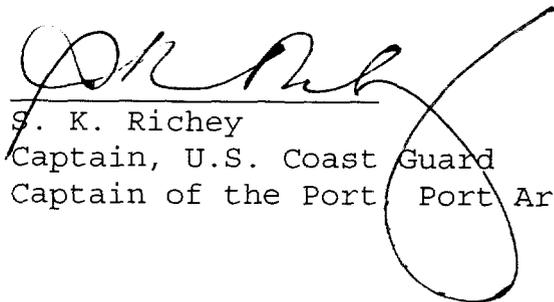
(b) Effective date. This rule is effective from 2 p.m. CST on April 11, 2005 until 1 p.m. CST on April 13, 2005.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Port Arthur.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or by telephone at (409) 723-6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATED: April 11, 2005



S. K. Richey
Captain, U.S. Coast Guard
Captain of the Port Port Arthur