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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13-99-015]

RIN 2115-AA97

USCG-99-5938 -- 114

Safety Zone Regulations, **Neah** Bay, **Neah** Bay, Washington

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of **Neah** Bay, Washington. The Coast Guard has observed fighting words being exchanged between people on vessels and shore, and objects being thrown at vessels in the **Neah** Bay area today. The Coast Guard is concerned about significant threats to human and property safety. This action is deemed necessary to minimize conflicts that could rapidly escalate into widespread civil unrest that would endanger persons, waterfront facilities and the environment as they have in the past year in this locale. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

DATES: This regulation is effective immediately and will remain in effect until 9:00 p.m. Pacific Daylight Time May 21st, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office **Puget** Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 7:00 a.m. and 5 p.m., Monday through Friday, except federal holidays.

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FOR FURTHER INFORMATION CONTACT: **LT Paul Stocklin**, c/o Captain of the Port **Puget** Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217-6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and **good** cause exists for making it effective less than 30 days from date of publication in the FEDERAL REGISTER. Publishing a **NPRM** would be contrary to public interest since immediate action is necessary to ensure the safety of the persons, vessels and facilities in the vicinity of **Neah** Bay. Due to the emergent nature of this situation, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in **Neah** Bay, Washington. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area from the serious threats associated with civil unrest. The **Makah** Tribe has obtained authority from the International Whaling Commission to take up to five gray whales annually in the **Makah's** usual and accustomed fishing area off the northwest coast of Washington and in the entrance of the Strait of Juan De **Fuca**. Individuals and groups opposed to this activity have been protesting the hunt from vessels positioned off the **Makah** Reservation in **Neah** Bay. Given the passionate feelings on both sides of the controversy, the potential for accidents and

violence is high. Recent indiscriminate and unrestrained malicious events originating ashore at the **Makah** Reservation have introduced a hazard to the safety of persons and vessels navigating within close proximity of shore. Fighting words have been exchanged by the various parties in the locale. To promote public safety and reduce the risk of unsafe acts that could potentially endanger life and property of persons in vessels, the Coast Guard is establishing a temporary safety zone along the **Neah** Bay waterfront. Entry into this zone will be prohibited unless authorized by the Captain of the Port. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the event's limited size and duration. The safety zone will not impede the movement of vessels with a bona fide need to transit the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this section and concluded that, under figure 2-1, paragraph (34) (g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical

Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes temporary safety zone of undetermined duration, but which will in all instances be of limited duration within the one-week timeframe.

List of Subjects in 33 CFR Part. 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165 [AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T13-007 is added to read as follows:

165.T13-007 Safety Zone, Neah Bay, Neah Bay, WA.

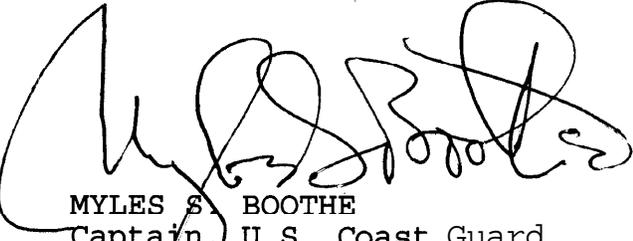
(a) Location. The following area is a safety zone: All waters of **Neah Bay, Neah Bay**, Washington, shoreward (southwest) of a line drawn 300° T from **Neah Bay Marina Entrance Light 1** (Light List Number **16168**) at the western end of the marina breakwater, position **48° 22' 10" N, 124° 36' 46" W**, to the western terminus of the Army Corps of Engineers breakwall, where it intersects the mainland, at position **48° 22' 35"N, 124° 37' 49" W**.

(b) Regulations. In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives. Vessels currently inside this safety zone may be ordered to move beyond the safety zone by the Captain of the Port or his designated representatives.

(c) Effective dates. This regulation becomes effective immediately and remains in effect until 9:00 p.m. Pacific Daylight Time May 21st, 1999, unless sooner terminated by the Captain of the Port.

DATED:

May 17, 1999



MYLES S. BOOTHE
Captain, U.S. Coast Guard
Captain of the Port, Puget Sound