

this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final "Environmental Analysis Checklist" 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 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.105 to read as follows:

##### § 165.105 Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone.

(a) *Definition*. "Passenger vessel" as used in this section means a passenger vessel over 100 gross tons authorized to carry more than 500 passengers for hire making voyages, any part of which is on the high seas, and for which passengers are embarked, disembarked or pay a port call, in the Portland, Maine, Captain of the Port zone as delineated in 33 CFR 3.05–15.

(b) *Location*. The following areas are security zones:

(1) All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 100-yard radius of any passenger vessel that is anchored, moored, or in the process of mooring.

(2) All navigable waters, within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, extending 200 yards ahead, and 100 yards aside and astern of any passenger vessel that is underway.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port, Portland,

Maine (COTP) or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(d) *Enforcement*. The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: April 9, 2003.

**Wyman W. Briggs,**

*Acting Commander, U.S. Coast Guard,  
Captain of the Port, Portland, Maine.*

[FR Doc. 03–10424 Filed 4–25–03; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[CGD01–03–028]

RIN 1625–AA00

##### Security Zones; Escorted Vessel Transits, Portland, ME, Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary security zones for vessels designated by the Captain of the Port (COTP) Portland, Maine, to be in need of a Coast Guard escort for security reasons while they are transiting the COTP Portland, Maine Zone. These security zones are needed to safeguard the public, designated vessels and their crews, other vessels and their crews, and the ports and infrastructure within the Portland, Maine, COTP zone from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into or movement within these zones, without the express permission of the Captain of

the Port, Portland, Maine or his authorized patrol representative, is strictly prohibited.

**DATES:** This rule is effective from 12 a.m. (noon) EDT on April 15, 2003 until 12 a.m. (noon) EDT on October 11, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01–03–028 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Portland, 27 Pearl Street, Portland, Maine, 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Ronald F. Pigeon at Marine Safety Office Portland, (207) 780–3251.

#### 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 an NPRM. Due to the heightened Homeland Security Advisory System threat level and the current conflict in Iraq we feel it is necessary and prudent to enact this regulation immediately to safeguard the public, the port, facilities, and the maritime community and to ensure the security of escorted vessel transits in the Portland, Maine, COTP zone. Any delay would leave escorted vessels, their crews, the port, facilities, and the maritime community with inadequate security measures to meet potential threats.

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**. Due to the heightened Homeland Security Advisory System threat level and the current conflict in Iraq, the Coast Guard has expanded its use of vessel boardings and escorts to better safeguard the public, the port facilities, and the maritime community from possible terrorist activity. This regulation is needed immediately to assist the Coast Guard in providing adequate protection around these escorted vessels while transiting in the Portland, Maine, COTP zone.

##### Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, the ongoing conflict in Iraq and the continuing concern for future terrorist acts against the United States, we have established security zones to safeguard escorted vessels transiting in the Portland, Maine, COTP zone. For purposes of this

rulemaking, escorted vessels include any vessels designated by the Coast Guard Captain of the Port, Portland, Maine to be in need of Coast Guard escorts in the Portland, Maine, COTP zone, other than Liquefied Petroleum Gas (LPG) vessels, which are covered under 33 CFR 165.103, or high capacity passenger vessels, which are covered under 33 CFR 165.105. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort protection.

These security zones are needed to protect escorted vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature. The security zones have boundaries as follows: All navigable waters, within the Portland Maine, Captain of the Port zone, extending from the surface to the sea floor, extending 200-yards ahead, and 100-yards aside and astern of any designated vessel that is underway.

No person or vessel may enter or remain in the prescribed security zones at any time without the permission of the Captain of the Port. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or the designated Coast Guard on-scene representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$100,000), *in rem* liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50

U.S.C. 191 *et seq.*) (the "Magnuson Act"), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

#### Discussion of Rule

This proposed rule establishes temporary security zones for vessels designated to be in need of Coast Guard escorts by the Captain of the Port, Portland, Maine, while those vessels are transiting within the Portland, Maine, Captain of the Port zone. The security zones will encompass all navigable waters, within the Portland, Maine, Captain of the Port zone, extending from the surface to the sea floor, extending 200-yards ahead, and 100-yards aside and astern of any escorted vessel that is underway.

Given the threat of sabotage, terrorist or subversive attacks, this proposed rule is necessary to immediately assist the Coast Guard in providing adequate protection around escorted vessels while transiting in the Portland, Maine, COTP zone under Coast Guard escort. Specifically, the vessels at issue include: those which are deemed by the Captain of the Port, Portland, Maine to be in need of Coast Guard escorts, for security reasons. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of this escort protection.

The Captain of the Port, Portland, Maine will notify the maritime community of the periods during which the safety and security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones and a designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort.

#### 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).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary. Although this proposed rule will prevent some traffic from moving within a portion of the

harbor during escorted vessel transits, the effect of this regulation will not be significant for several reasons: the impact on the navigational channel will be for a minimal amount of time, there is ample room to navigate around the zones, and delays, if any, will be minimal, as vessels will only have to wait a short time for the escorted vessel to pass if they cannot safely pass outside the zones. Moreover, broadcast notifications will be made via VHF radio to the maritime community advising them of the boundaries of the zones and Coast Guard and other law enforcement assets will be on-scene to direct vessels away from the zones. Vessels will be able to arrange passage through the zones, if needed, with the permission of the Captain of the Port or the designated on-scene patrol representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 vessels intending to transit or anchor in these zones during escorted vessel transits. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones; vessels will only have to wait a short time for the escorted vessel to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Ronald F. Pigeon at Marine Safety Office Portland, (207) 780-3251.

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 collection of information requirements 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 this rule 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will 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 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.

#### 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 since implementation of this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final "Environmental Analysis Checklist" and a final

"Categorical Exclusion Determination" will be 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T01-028 to read as follows:

#### § 165.T01-028 Security Zones; Escorted Vessel Transits, Portland, Maine, Captain of the Port Zone.

(a) *Definition*. "Escorted vessel" as used in this section describes escorted vessels operating in the Portland, Maine, Captain of the Port zone including the following: any vessels designated to be in need of Coast Guard escorts by the Captain of the Port, Portland, Maine, for security reasons, other than Liquefied Petroleum Gas (LPG) vessels, which are covered under 33 CFR 165.103, or high capacity passenger vessels, which are covered under 33 CFR 165.105. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort protection.

(b) *Location*. The following areas are security zones: All navigable waters, within the Portland Maine, COTP zone, extending from the surface to the sea floor, extending 200 yards ahead, and 100 yards aside and astern of any escorted vessel that is underway.

(c) *Effective period*. This rule is effective from 12 a.m. (noon) EDT on April 15, 2003 until 12 a.m. (noon) EDT on October 11, 2003.

(d) *Regulations*. (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the COTP at telephone number 207-780-3251 or the authorized on-scene patrol representative on VHF-FM channel 13

(156.65 MHz) or VHF-FM channel 16 (156.8MHz) to seek permission to transit the area.

(3) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(4) The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. The COTP or his designated representative will identify escorted vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(e) *Enforcement.* The COTP will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: April 14, 2003.

**Mark P. O'Malley,**

*Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.*

[FR Doc. 03-10425 Filed 4-25-03; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

RIN 1018-AI31

#### **Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade**

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule revises regulations related to the customary trade of fish taken under Subsistence Management Regulations. The rulemaking is necessary because Title VIII of the Alaska National Interest Lands Conservation Act recognizes customary

trade as a use of subsistence-taken resources. However, the existing Federal regulations do not provide clear guidance as to what is or is not allowed in this regard. This rulemaking replaces a portion of the existing regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Wildlife Resources," which expire on February 29, 2004.

**DATES:** This rule is effective May 28, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (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, 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. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, 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. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114-27170). On January 8, 1999, (64 FR 1276), the Departments

published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*. 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 (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, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed and approved the publication of this final rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

#### **Applicability of Subparts A, B, and C**

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

#### **Federal Subsistence Regional Advisory Councils**

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands.