

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[CGD13-02-016]****RIN 1625-AA00 [Formerly 2115-AA97]****Regulated Navigation Area; Olympic View Resource Area EPA Superfund Cleanup Site, Commencement Bay, Tacoma WA****AGENCY:** Coast Guard, DHS.**ACTION:** Final Rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) on a portion of Commencement Bay, Tacoma, Washington. This RNA will preserve the integrity of a clean sediment cap placed over the contaminated seabed as part of the remediation process at the Olympic View Resource Area Environmental Protection Agency (USEPA) Superfund Site. It is being established at the request of the USEPA and the Washington State Department of Natural Resources and prohibits activities that would disturb the seabed, such as anchoring, dredging, spudding, laying cable, or other disturbances of the bottom. This rule will not affect transit or navigation of the area.

DATE: This rule is effective May 12, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13-02-016 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST1 Craig. R. Petersen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217-6232.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On December 2, 2002, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; Olympic View EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA, in the *Federal Register* (67 FR 71513). We received two phone calls commenting on the proposal. No public hearing was requested, and none held.

Background and Purpose

The Olympic View Resource Area Superfund Site is located between the eastern boundary of the Thea Foss Waterway and the western boundary of the Middle Waterway of Commencement Bay, Washington. The site includes property owned and or leased by the now closed Puget Sound Plywood Company, contaminated sediments in Commencement Bay, and other upland sources of contamination. The site is approximately 12.4 acres in size and includes 10.6 acres of intertidal and shallow subtidal marine aquatic land. An area of 2.2 acres of marine sediments is contaminated within the site.

Part of the remediation process for this site consists of covering the contaminated sediments with a layer of clean medium to coarse-grained sand approximately one-meter (3-feet) thick or greater. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

This Regulated Navigation Area (RNA) is a permanent regulation restricting activities such as anchoring, dredging, spudding, laying cable or other activities, which would disturb the sediment cap covering the contaminated seabed. The rule does not affect normal transit or navigation of the area. The Olympic View Resource Area is located offshore of the peninsula between the Thea Foss and Middle Waterways in Commencement Bay, Tacoma, Washington. The sediment cap includes approximately 480 feet of shoreline extending approximately 420 feet into the bay. This area is relatively unprotected and is rarely utilized as an anchorage.

Discussion of Comments and Changes

The Coast Guard received two phone calls commenting on the notice of proposed rulemaking (NPRM). The following paragraphs contain a discussion of comments received and an explanation of changes, if any, to the proposed regulations.

Comment: Two phone comments were received stating that the longitude on the last set of coordinates described in the NPRM as 47°15'46.74493" North, 122°26'09.27617" West appeared incorrect and did not make sense.

Response: These comments were investigated and found to be correct. The correct longitude on the last set of coordinates should be 122°26'02.50574" West. Accordingly, the last set of coordinates listed in paragraph (a) of the

final rule has been corrected and reads 47°15'46.74493" North, 122°26'02.50574" West. The size of the RNA did not appreciably change due to this correction.

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 finding is based on the fact that the regulated area established by the rule would encompass a small area that should not impact commercial or recreational traffic. The Olympic View Resource Area does not appear to have any viable industrial or commercial use. Moreover, any land or water use on the site that would be at odds with the RNA would likely be restricted through the site's designation by the City of Tacoma as a Natural Resource Damage Assessment (NRDA) settlement site, pursuant to a Consent Decree between the City of Tacoma and the Natural Resource Trustees. Furthermore, on May 24, 2000, the State Commissioner of Public Lands established the project area as part of an environmental reserve under RCW 79.68.060. This designation removes the site from potential development or commercial leasing. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The RNA will not have a significant economic impact due to its small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the