

**DEPARTMENT OF DEFENSE****Department of the Army, Corps of Engineers****33 CFR Part 334****United States Navy Restricted Area, Naval Base Ventura County, Port Hueneme, CA**

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Notice of Proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a new restricted area in waters adjacent to Naval Base Ventura County, Port Hueneme, California. This amendment would prohibit vessels and persons from entering Port Hueneme Harbor, from the seaward ends of the two entrance jetties to the shoreline, without first obtaining permission from the Captain of the Port or the Commanding Officer of Naval Base Ventura County. This amendment is necessary to safeguard U.S. Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

**DATES:** Written comments must be submitted on or before February 12, 2003.

**ADDRESSES:** Send comments to U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Mark D. Cohen, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452-3413.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the River and Harbor Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps of Engineers is proposing to amend the restricted area regulations in 33 CFR part 334 by adding a restricted area at 334.1127. More informal advanced notification procedures similar to those proposed have been in place. In addition, pursuant to federal regulations at 33 CFR 165, the U.S. Coast Guard has extended until June 15, 2003, a temporary security zone that imposes advanced notification requirements for all vessels entering Port Hueneme Harbor. The U.S. Coast Guard extended the effective period of the temporary security zone to continue protecting

U.S. Navy vessels and facilities at Port Hueneme from vessel-borne threats until a permanent restricted area is established. The proposed restricted area would permanently establish formal advanced notification procedures for all vessels and persons seeking to enter Port Hueneme Harbor landward of the seaward limits or ends of the two entrance jetties.

**Procedural Requirements***a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of executive order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small business and small governments). The Corps of Engineers expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal would have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

The Los Angeles District is in the process of preparing an Environmental Assessment (EA) for this action. Although not expected at this time, based on the minor nature of the proposed additional restricted area regulations, an Environmental Impact Statement (EIS) would be prepared if determined appropriate. When the NEPA documentation is completed, it will be available for review at the Los Angeles District office listed at the end of the FOR FURTHER INFORMATION CONTACT paragraph, above.

*d. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small governments would not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.1127 is added to read as follows:

**§ 334.1127 Naval Base Ventura County, Port Hueneme, California; Restricted Area.**

(a) *The area.* The waters within Port Hueneme Harbor, beginning at the seaward ends of the two Port Hueneme Harbor entrance jetties, with the northwestern entrance jetty end occurring at latitude 34°8'37.0" N, longitude 119°12'58.8" W and the southeastern entrance jetty occurring at latitude 34°8'34.8" N, longitude 119°12'43.2" W and extending northeasterly to the shoreline.

(b) *The regulation.* No vessels or persons may enter the restricted area unless permission is obtained in advance from Captain of the Port or the Commanding Officer of Naval Base Ventura County. Commercial vessels that are required to make Advanced Notifications of Arrival shall continue to do so. All vessels must obtain clearance from "Control 1" over marine radio channel 06 VHF-FM prior to crossing the COLREGS (Collision Regulations) demarcation line. Vessels without marine radio capability must obtain clearance in advance by contacting "Control 1" via telephone at (805) 982-3938 prior to crossing the COLREGS demarcation line. The COLREGS demarcation line is defined as an imaginary line approximately 1,500 feet in length connecting the seaward limits or ends of the two Port Hueneme Harbor entrance jetties, with the northwestern jetty end occurring at latitude 34°8'37.0" N, longitude 119°12'58.8" W and the southeastern entrance jetty occurring at 34°8'34.8" N, longitude 119°12'43.2" W.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer of the U.S. Naval Base Ventura County, or any such agencies or persons as he/she may designate.