

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

CESAW-RG-W

ACTION ID 200510091

December 15, 2004

PUBLIC NOTICE

APPLICANT: UNITED STATES MARINE CORPS, Commanding General, Marine Corps Air Station Cherry Point. The Department of Defense facility requiring the restricted area is Marine Corps Air Station Cherry Point located in Havelock, North Carolina.

WATERWAY: Southern side of the Neuse River between Flanner Beach and Cherry Point, north of Havelock in Craven County, North Carolina.

WORK: Proposed changes to Federal Register 33 CFR Part 334, Danger Zone and Restricted Area Regulations.

SUMMARY: The United States Marine Corps proposes to establish a maritime security zone by extending the current boundaries of the existing restricted area out to 1,000 yards offshore. This zone would be located along the reservation of the Marine Corps Air Station Cherry Point extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creek. The purpose of this work is to provide enhanced security for Marine Corps property, vessels, facilities and personnel. If approved, the enhanced security zone will help the Marine Corps ensure that unauthorized personnel and vessels are excluded from approaching their facilities, ships and personnel. **THE PROPOSED SECURITY ZONE WILL BE RESTRICTED TO ALL TRAFFIC EXCLUDING PERMITTED COMMERCIAL FISHERMEN AND THEIR VESSELS DURING HEIGHTENED FORCE PROTECTION CONDITIONS (FPCONs).** A positive identification procedure for identifying commercial fishermen will be developed and promulgated in preparation for implementing the security zone. The location of the proposed restricted zone is included with this Public Notice.

SUPPLEMENTAL INFORMATION:

Pursuant to its authorities in Section 7 of the Rivers and harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriation s Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR 334.440. Requestor is Commanding General, Marine Corps Air Station Cherry Point. The Department of Defense facility requiring the security zone is the Marine Corps Air Station Cherry Point located in Havelock, North Carolina.

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 12291 do not apply.
- (b) Review under the Regulatory Flexibility Act. The proposed rule has been reviewed under the Regulatory Flexibility Act (P.L. 96-354), which requires the preparation of a regulatory flexibility analysis of any regulation that will have a significant economic impact on a substantial number of

small businesses (i.e. small businesses and small Government jurisdictions). The Corps expects that the establishment of this restricted zone would have practically no impact on the public, no anticipated navigational hazard and minimal interference with existing waterway traffic and accordingly, the Corps certifies that this proposal, if adopted, will have no significant economic impact on small entities and preparation of a regulatory flexibility analysis is not warranted.

- (c) Review under the National Environmental Policy Act. A preliminary Environmental Assessment (EA) has been prepared for this action. We have concluded that the restricted zone proposed herein will not have a significant impact on the quality of the human environment and preparation of an environmental impact statement is not required.
- (d) Unfunded Mandates Act. This proposed 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 will not be significantly and uniquely affected by this rulemaking.
- (e) Review under the Paperwork Reduction Act. No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq).

LIST OF SUBJECTS IN 33 CFR 334

Navigation (water), Transportation, Danger Zones

In consideration of the above, the Corps proposes to amend Part 334 of Title 33 to read 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. 226; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.430 would be amended by revising paragraph (a) *The area* to read as follows:

- (1.) That portion of Neuse River within 500 feet of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creek, and all waters of Hancock and Slocum Creeks and their tributaries within the boundaries of the reservation.
- (2.) During heightened Force Protection Conditions (FPCONs), the restricted area is defined as that portion of Neuse River within 1,000 yards of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creeks and their tributaries within the boundaries of the reservation. No vessel or persons may enter the restricted area during heightened FPCONs unless specific authorization is granted by the Commanding General Marine Corps Air Station, Cherry Point, North Carolina and/or other persons or agencies as he/she may designate.

This section shall be enforced by the Commanding General Marine Corps Air Station, Cherry Point, North Carolina and/or other persons or agencies as he/she may designate.

It is requested that you communicate the foregoing information concerning the proposed work to any persons known to you to be interested and not and not being known to this office and who do not receive a copy of this notice.

Written comments pertinent to the proposed action, as outlined above, will be received in this office, Attention: Mr. Scott Jones, until **4:15 p.m., Friday, January 14, 2005.**

APPLICANT: UNITED STATES MARINE CORPS, Commanding General, Marine Corps Air Station Cherry Point. The Department of Defense facility requiring the restricted area is Marine Corps Air Station Cherry Point located in Havelock, North Carolina.

PROPOSED WORK: Proposed changes to Federal Register 33 CFR Part 334, Danger Zone and Restricted Area Regulations.

No. Cys. Mailed To

- 1 Mr. Bill Darner, MCAS Cherry Point, Operations Directorate, PSC Box 8011, Cherry Point NC 28533-0011
- 56 Addresses that requested all NC Public Notices and Addresses receiving for Carteret, Craven, Jones, Pamlico Counties and CESA-W-RG-W
- 1 Honorable Walter B. Jones, Jr., 214 Cannon House Ofc Building, First and Independent Avenue, S.E., Washington, DC 20515
- 1 United States Postal Service, Postmaster, Bayboro, NC 28515
- 1 United States Postal Service, Postmaster, Merritt, NC 28556
- 1 United States Postal Service, Postmaster, Alliance, NC 28509
- 1 United States Postal Service, Postmaster, Grantsboro, NC 28529
- 1 United States Postal Service, Postmaster, Arapahoe, NC 28510
- 1 United States Postal Service, Postmaster, Oriental, NC 28571
- 1 United States Postal Service, Postmaster, New Bern, NC 28560
- 1 United States Postal Service, Postmaster, River Bend, NC 28562
- 1 United States Postal Service, Postmaster, Pollocksville, NC 28573
- 1 United States Postal Service, Postmaster, Trenton, NC 28585
- 1 United States Postal Service, Postmaster, Havelock, NC 28532
- 1 United States Postal Service, Postmaster, Newport, NC 28557
- 1 United States Postal Service, Postmaster, Morehead City, NC 28587
- 1 United States Postal Service, Postmaster, Beaufort, NC 28516
- 1 United States Postal Service, Postmaster, Maysville, NC 28555
- 1 Mr. Ron Sechler, National Marine Fisheries Service, Habitat Conservation Division, Pivers Island, Beaufort, NC 28516
- 1 Mr. Garland Pardue, United States Fish and Wildlife Service, Fish and Wildlife Enhancement, Post Office Box 33726, Raleigh NC 27636-3726
- 15 Mr. Doug Huggett, Division of Coastal Management, NCDENR, 1638 Mail Service Center, Raleigh, NC 27699-1638
- 2 Mr. Ronald J. Mikulak, Chief, Wetlands Regulatory Section, Water Management Division, USEPA, 61 Forsyth Street, SW, Atlanta, GA 30303.
- 1 Ms. Cyndi Karoly, NCDENR, Division of Water Quality, 1650 Mail Service Center, Raleigh, NC 27699-1650
- 1 USAED, Wilm, Washington Regulatory Field Office, ATTN: Mr. Scott Jones, PO Box 1000, Washington, NC 27889-1000.
- 1 USAED, Wilm, Wilmington Regulatory Field Office, ATTN: Mickey Sugg, Post Office Box 1890, Wilmington, NC 28402-1890

95 TOTAL