



US Army Corps
of Engineers
Honolulu District

Public Notice

Regulatory Branch (1145b)
Building 230
Fort Shafter, Hawaii 96858-5440

Public Notice Date: 1 July 2013
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Permit File Number: POH-2012-00213

NOTICE OF PROPOSED RULE AMENDMENT TO DANGER ZONE AT BARKING SANDS KAUAI, HAWAII

The purpose of this notice is to provide the public with information regarding a proposed amendment to the regulations for the existing danger zone in the waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Kauai, Hawaii.

APPLICANT: Commander, Pacific Missile Range Facility

LOCATION: Pacific Ocean off the Pacific Missile Range Facility, Barking Sands, Kauai, Hawaii

TIMEFRAME: The proposed amendment to 33 CFR Part 334, described in this notice, is being published in the Federal Register, dated July 1, 2013 starting on page 39198.

GENERAL INFORMATION: Danger zone and restricted area regulations are promulgated by the U.S. Army Corps of Engineers (Corps) in response to requests made by other Department of Defense agencies. Danger zones are defined as water areas used for target practice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. Restricted areas are defined as water areas set aside for the purpose of limiting or prohibiting public access to the area. Restricted areas generally provide security for Government property and protection to the public from the risks of damage or injury from the Government's use of the area. Danger zones and restricted areas may be closed to the public on a full time or intermittent basis, as stated in the regulations.

The U.S. Navy conducts missile defense activities, test missile launches, and training activities at the Pacific Missile Range Facility. The proposed amendment is necessary to protect the public from hazards associated with range operations, test and training activities, and increased threat conditions. The proposed amendment would expand the existing danger zone and would prohibit any activity by the public within the danger zone without first obtaining permission from the Commanding Officer, Pacific Missile Range Facility, to ensure public safety and/or installation good order during range operations, weapon system testing, training activities, increases in force protection and other mission essential evolutions. The expanded danger zone would extend along approximately seven miles of

shoreline adjacent to the Pacific Missile Range Facility, with its seaward extent ranging between 2.96 and 4.16 nautical miles offshore.

PROJECT PURPOSE AND DESCRIPTION: The Pacific Missile Range Facility is located just north of Kekaha town in an area known as Barking Sands. The facilities are composed of multiple U.S. Navy units, both land and seaward, and maintain an operational readiness for the Navy for both routine and hazardous operations. The expansion of the existing danger zone is necessary to enhance the Navy's ability to protect the general public from injury or property damage during routine and emergency Navy operations.

Therefore, the Corps is proposing to amend the regulations at 33 CFR Part 334 to incorporate changes described below. In order to view the full Federal Register notice please go to <http://www.regulations.gov>. It may take up to a minute for this page to open. In the "SEARCH for:" search window (located near the center of the page), please enter DOCKET No. 2013-15669, then click the "Search" button. Depending on many variables, it may take several minutes for the search results to be shown. You may click on the title of the proposed rule to be taken to another page where you can choose to view the proposed rule document.

For the reasons set out above, 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. Revise § 334.1390 to read as follows:

§ 334.1390 Pacific Ocean off the Pacific Missile Range Facility, at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) *The danger zone.* All navigable waters within an area beginning at a point on the shore at latitude 22° 04'13.65"N., longitude 159°46'30.76"W.; and continue south along the shoreline to latitude 21°58'42.77"N., and longitude 159°45'26.35"W. Thence extending southwest to latitude 21°56'6.00"N., and longitude 159°46'55.91"W. extending northwest to latitude 21°58'59.81"N. and longitude 159°50'51.42"W, continuing north to latitude 22° 02'28.09"N., and longitude 159°51'28.15"W., and continuing northeast to latitude 22° 06' 30.71" N., longitude 159°49'20.43"W.; and thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) *The regulations.* (1) Dredging, dragging, seining, and other similar operations within the danger zone are prohibited.

(2) All persons, boats, vessels, or other craft are prohibited from entering, transiting, or remaining within the danger zone during range operations, test and training activities, or increases in force protection that pose a hazard to the general public, as determined by the enforcing agency. The enforcing agency's determination of the necessity of closing the danger zone due to increases in force protection will be based on the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, FPCON levels are titled Normal, Alpha, Bravo, Charlie and Delta.

(3) Closure of the danger zone will be indicated by Notice to Mariners, the presence of Pacific Missile Range Facility range boats, beach markings including beach signs along the north and south

beach borders alerting shoreline foot traffic, security patrols, and radio transmissions on common ocean frequencies to include Marine band channel 6 (156.300 Mhz), Marine band channel 16 (156.800 Mhz), and CB channel 22. The enforcing agency will post the danger zone closure schedule on its official Navy website, <http://www.cnic.navy.mil/PMRF/>, and Facebook website, <http://www.facebook.com/PacificMissileRangeFacility>. The danger zone closure schedule may also be obtained by calling the following phone numbers: 808-335-4301, 808-335-4388, and 808-335-4523.

(4) The enforcing agency will authorize the use of some, or all, of the Danger Zone for civilian waterborne activities when mission-essential evolutions such as range operations, test and training activities, or increases in force protection levels permit it. Such activities include fishing, sightseeing, shelling, surfing, and transit.

(c) *The enforcing agency.* The regulations in this section shall be enforced by the Commanding Officer, Pacific Missile Range Facility, Hawaii and such agencies or persons as he or she may designate.

IMPACTS OF PROPOSED ACTIVITIES IF AUTHORIZED:

The operations and safety procedures would essentially remain unchanged. Materials generated by missile launches and hazardous training are not expected to be discharged into the water areas of the danger zone. Therefore, the incremental effects associated with the amended danger zone are considered discountable and are not expected to adversely or permanently impact existing benthic fauna or other marine species that utilize or colonize the Pacific Ocean waters and substrate in the area off Barking Sands, Kauai, Hawaii, proposed for the expanded danger zone. Other potential impacts, such as the permanent prohibition of boating traffic within the danger zone without permission from the Commander, Pacific Missile Range Facility, are not expected to be adverse.

IMPACT ON HISTORIC PROPERTIES:

The action area for the proposed activity consists of the expanded area of the danger zone, as depicted in the attached figure/map. The Hawaii and National Register of Historic Places do not list any historic properties within the action area. Therefore, the Corps has determined that the areas of direct and indirect impact from the expansion of the danger zone would not impact any historic properties listed, or eligible for listing, on the Hawaii or National Registers of Historic Places.

This notice has been sent to the State Historic Preservation Officer, the State Office of Hawaiian Affairs, Hui Malama I Na Kupuna O Hawaii Nei, and the Aha Moku Council. Any comments they have regarding historic properties and cultural resources will be meaningfully considered before a final decision is made on the proposed amendment.

IMPACT ON ENDANGERED SPECIES:

Pursuant to Section 7 of the Endangered Species Act (ESA), the Corps has determined that the proposed expansion of this danger zone would result in no effect on federally listed species. Potential impacts to protected marine species are expected to be unlikely in the waters of the danger zone. The threatened green sea turtle (*Chelonia mydas*), endangered hawksbill turtle (*Eretmochelys imbricata*), humpback whale (*Megaptera novaengliae*), and Hawaiian monk seal (*Monachus schauinslandi*) may transit through or near the area, but are not expected to be indirectly or directly impacted by operational activities.

This notice has been transmitted to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Any comments they have on endangered or threatened species, or designated critical habitat, will be meaningfully considered before a final decision is made on the proposed amendment.

OTHER GOVERNMENT AUTHORIZATIONS/CERTIFICATIONS:

Prior to a decision on the proposed amendment, the applicant may be required to obtain a Coastal Zone Management (CZM) Program consistency waiver from the Office of Planning. Other State and local approvals which may be required would be the responsibility of the Commander, Pacific Missile Range Facility.

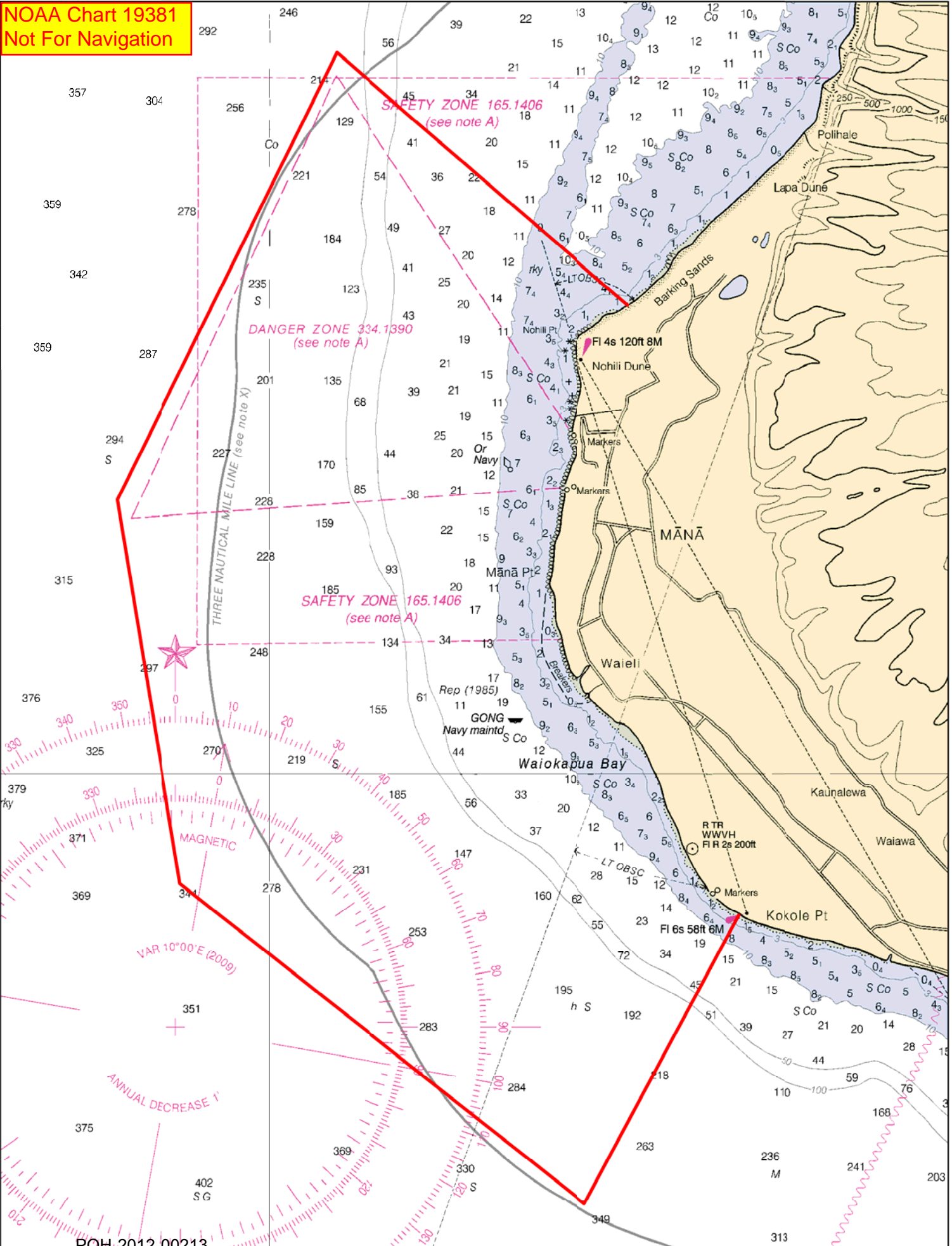
EVALUATION FACTORS:

The decision whether to amend the existing danger zone will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof. Among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, (40 CFR Part 230).

COMMENT AND REVIEW PERIOD: Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether it would be in the public interest to authorize this proposal. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and reference number as shown below. All e-mail comments should be sent to Farley.K.Watanabe@usace.army.mil. Conventional mail comments should be sent U.S. Army Corps of Engineers, Honolulu District, Regulatory Branch, Building 230, Fort Shafter, HI 96858 or by fax at 808-835-4126. Both conventional mail and e-mail comments must include the permit applicant's name and reference number, as shown below, and the commenter's name, address, and phone number. All comments whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration. Please include the following name and reference number: **POH-2012-00213**.

A map is attached to this Public Notice.

NOAA Chart 19381
Not For Navigation



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