



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0159]

RIN 1625-AA00

Safety Zone; Recurring Marine Events, Sector Key West, Florida.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish moving safety zones for certain waters within the Sector Key West Captain of the Port (COTP) Zone for five annually recurring marine events. This action is necessary to provide for the safety of the participants, participant vessels, and the general public on the navigable waters of the United States during these events. When these safety zones are activated and subject to enforcement, this rule would prohibit persons and vessels, other than those participating in the event, from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative. We invite your comments on this proposed rule.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0159 using the Federal e-Rulemaking Portal at <http://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rulemaking, call or email Lieutenant Scott Ledee, Waterways Management Division Chief, Sector Key West, FL, U. S. Coast Guard; telephone (305) 292-8768, e-mail SKWWaterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

Swim events and marine events are held on an annual recurring basis on the navigable waters within the Sector Key West COTP Zone. In the past, the Coast Guard has established safety zones for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. This proposed rule will consistently apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. The Table in this proposed rule lists each annual recurring event requiring a regulated area as administered by the Coast Guard.

By establishing a permanent regulation containing these annual recurring marine events, the Coast Guard would eliminate the need to establish temporary rules for events that occur on an annual basis.

The legal basis and authorities for this proposed rule is found in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to add five new annually recurring marine events to 33 CFR 165.786, as listed in the attached Table to § 165.786. The Table provides the event name, the sponsor name, the location of the event, and the approximate date and time of each event. The specific times, dates, regulated areas and enforcement period for each event will be provided through Broadcast Notice to Mariners, a Notice of Enforcement published in the Federal Register, and the Local Notice to Mariners which can be found at the following link: <https://www.navcen.uscg.gov/?pageName=lnmDistrict&region=7>.

The safety zones created by this proposed rule would cover all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of the safety vessels.

This proposed rule would prevent vessels from transiting areas specifically designated as safety zones during the periods of enforcement to ensure the protection of the maritime public and event participants from the hazards associated with the listed annual recurring events. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Key West or a designated representative.

The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

We expect the economic impact of this proposed rule to not be significant. Although this regulation may restrict access to small portions of the waterway within the Sector Key West COTP Zone, the effect of this regulation will be minimized for the following reasons: (1) the safety zones would only be enforced during limited time intervals during the swim and paddle events; (2) vessels may be authorized to enter the regulated areas with permission of the COTP Key West or a designated representative; and (3) advanced notification of closures will be made

via Local Notice to Mariners, Broadcast to Mariners, and through a Notice of Enforcement published in the Federal Register.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or

action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. 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 (adjusted for inflation) or more in any one

year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of safety zones. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this

rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add a new § 165.786 to read as follows:

§ 165.786 Safety Zone; Recurring Marine Events, Sector Key West, Florida.

(a) Regulations. (1) In accordance with 33 CFR 165.23, entering, transiting through, anchoring in, or remaining within the safety zones listed in the TABLE to § 165.786 during periods of enforcement is prohibited unless authorized by the Captain of the Port (COTP) Sector Key West or a designated representative.

(2) These regulations will be enforced for the duration of each event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners and through a Notice of Enforcement in the Federal Register well in advance of the events. Mariners should consult the Federal Register or their Local Notice to Mariners to remain apprised of schedule their Local Notice to Mariners to remain apprised of schedule or event changes.

(3) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator must proceed as directed.

(4) Vessel operators desiring to enter, transit through, anchor in, or remain within the regulated area during the enforcement period shall contact the COTP Sector Key West or the designated on-scene representative via VHF channel 16 or call the Sector Key West Command Center at (305) 292-8727 to obtain permission.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Key West in the enforcement of the regulated areas.

(c) The COTP Key West or designated representative may delay or terminate any event in this subpart at any time to ensure safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation, or participant behavior.

(d) The regulated area for all marine events listed in Table 1 of § 165.786 is that area of navigable waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels.

Table to § 165.786

[Datum NAD 1983]

4.0	APRIL
4.1 Key West Paddle Board Classic	Event Type: Paddle Event.
	Sponsor: Lazy Dog Adventure Outfitters
	Dates: A one day event held on the last weekend in April.
	Time (Approximate): 9:00 a.m. to 4:00 p.m., daily.
	Location(s): Begins at Higgs Beach in Key West, Florida at a point Latitude 24°32.81' N., longitude 081°47.20' W., thence west offshore of Fort Zach State Park to latitude 24°32.72' N., longitude 081°48.77' W., thence north through Key West Harbor to latitude 24°34.10' N., longitude 081°48.14' W., thence east through Fleming Cut to latitude 24°34.42' N., longitude 081°45.08' W., south on Cow Key Channel to latitude 24°33.04' N., longitude 081°44.98' W., and thence west to point of origin at latitude 24°32.81' N., longitude 081°47.20' W.
6.0	JUNE
6.1 FKCC Swim Around Key West	Event Type: Swim Event.
	Sponsor: Florida Keys Community College
	Dates: A one day event held on a Saturday in June.
	Time (Approximate): 7:30 a.m. to 4:00 p.m.
	Location(s): Begins at Smathers Beach in Key West, Florida at a point Latitude 24°33.01' N., longitude 081°46.47' W., thence west offshore of Fort Zach State Park to latitude 24°32.72' N., longitude 081°48.77' W., thence north through Key West Harbor to latitude 24°34.10' N., longitude 081°48.14' W., thence east

	through Fleming Cut to latitude 24°34.42' N., longitude 081°45.08' W., south on Cow Key Channel to latitude 24°33.04' N., longitude 081°44.98' W., and thence west to point of origin at latitude 24°33.01' N., longitude 081°46.47' W.
6.2 Annual Swim Around Key West	Event Type: Swim Event.
	Sponsor: Key West Athletic Association
	Dates: A one day event held on a Saturday in June.
	Time (Approximate): 7:30 a.m. to 4:00 p.m.
	Location(s): Begins at Smathers Beach in Key West, Florida at a point Latitude 24°33.01' N., longitude 081°46.47' W., thence west offshore of Fort Zach State Park to latitude 24°32.72' N., longitude 081°48.77' W., thence north through Key West Harbor to latitude 24°34.10' N., longitude 081°48.14' W., thence east through Fleming Cut to latitude 24°34.42' N., longitude 081°45.08' W., south on Cow Key Channel to latitude 24°33.04' N., longitude 081°44.98' W., and thence west to point of origin at latitude 24°33.01' N., longitude 081°46.47' W.
7.0	JULY
7.1 Hemingway Paddle Board Race	Event Type: Paddle Event.
	Sponsor: Hemingway Sunset Run LLC
	Dates: A one day event held on the 2 <sup>nd</sup> or 3 <sup>rd</sup> Saturday in July.
	Time (Approximate): 6:00 p.m. to 7:30 p.m.
	Location(s): Begins at Higgs Beach in Key West, Florida at a point Latitude 24°32.79' N., longitude 081°47.74' W., thence east to latitude 24°32.56' N., longitude 081°47.11' W., thence east to latitude 24°33.01' N., longitude 081°46.47' W, thence west to latitude 24°32.56' N., longitude 081°47.11' W., and thence west to point of origin at latitude 24°32.79' N., longitude 081°47.74' W.
9.0	SEPTEMBER
9.1 Swim for Alligator Lighthouse	Event Type: Swim Event.
	Sponsor: Friends of the Pool
	Dates: A one day event held on the 3 <sup>rd</sup> Saturday in September.
	Time (Approximate): 7:30 a.m. to 4:30 p.m.
	Location(s) (Primary): Beginning at a point Latitude 24°54.82' N., longitude 080°38.03' W., thence to latitude 24°54.36' N., longitude 080°37.72' W., thence to latitude 24°51.07' N., longitude 080°37.14' W., thence to latitude 24°54.36' N., longitude 080°37.72' W., thence to point of origin at latitude 24°54.82' N., longitude 080°38.03' W. Location(s) (Alternate) <sup>1</sup> : Beginning at a point Latitude

	24°54.82' N., longitude 080°38.03' W., thence to latitude 24°53.25' N., longitude 080°37.04' W., thence to latitude 24°52.05' N., longitude 080°38.85' W., thence to latitude 24°54.36' N., longitude 080°37.72' W., thence to point of origin at latitude 24°54.82' N., longitude 080°38.03' W.
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Dated: May 8, 2017

J. A. Janszen,  
Captain, U.S. Coast Guard,  
Captain of the Port Key West.

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