



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1067]

RIN 1625-AA00

Safety Zone: Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the navigable waters of the Cape Fear River in Brunswick County and New Hanover County, North Carolina. These temporary safety zones are intended to restrict vessel traffic on the Cape Fear River while a vessel transports and offloads one new Neo-Panamax container crane to the North Carolina State Port in Wilmington, North Carolina. The first temporary safety zone will be enforced for one day during vessel transit from April 1 through April 30, 2019, and the second temporary safety zone for offload will be enforced for one day within five days after transit. This action is intended to restrict vessel traffic on the Cape Fear River to protect mariners and vessels from the hazards associated with transporting and offloading the assembled container crane. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER], through May 5, 2019. For the purposes of enforcement, actual notice will be used from April 1, 2019, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1067 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: 910-772-2221, email:

Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On November 14, 2018, the North Carolina State Port Authority notified the Coast Guard that they will be transporting one pre-assembled Neo-Panamax container crane up the Cape Fear River to the North Carolina State Port in Wilmington, North Carolina, and offloading it. Due to crane preconstruction and vessel travel times, the crane arrival time was not set. The transit path will be from the Cape Fear River Entrance Buoy, north through the Cape Fear River to the turning basin, and ending at the

North Carolina State Port in Wilmington, North Carolina. The planned offload date is two days after transit, but weather conditions may change the offload date to any day within five days after transit. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with transporting and offloading the container crane would be a concern for anyone transiting the Cape Fear River. In response, on January 31, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled *Safety Zone; Cape Fear River, Wilmington, NC* (84 FR 619). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to arrival of a new Neo-Panamax container crane. No comments were received during our comment solicitation period which ran through March 4, 2019. During the comment period, the North Carolina State Port Authority requested a new potential vessel arrival period from April 1 through April 30, 2019, instead of March 20 through April 15, 2019, as proposed in the NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during transport and offload of the container crane.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP North Carolina has determined that potential safety hazards associated with the arrival of a new Neo-Panamax container crane would

be a safety concern for anyone transiting the Cape Fear River. The purpose of this rule is to protect persons, vessels, and the marine environment on the Cape Fear River during transport and offload of the container crane.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 31, 2019. There is a minor change in the regulatory text of this rule from the proposed rule, shifting the vessel's arrival period. The vessel transporting the container crane will arrive sometime from April 1 through April 30, 2019, instead of March 20 through April 15, 2019, as proposed in the NPRM. In addition, the term Post-Panamax has been changed to Neo-Panamax to accurately describe the type of container crane being delivered.

This rule establishes a safety zone on a portion of the Cape Fear River to be enforced during the transit of a vessel transporting one pre-assembled Neo-Panamax container crane up the Cape Fear River from April 1 through April 30, 2019, and offloading the container within five days after transit. The currently scheduled transit date is April 6, 2019, and the currently scheduled offload date is April 8, 2019. The transport is expected to take between five and seven hours and the offload is expected to take up to five hours. Exact enforcement times will be based on tide schedules, anticipated sea conditions, and weather conditions, therefore the exact enforcement times will be announced by broadcast to mariners at least two days prior to the transit. The safety zone for the transit includes all navigable waters of the Cape Fear River from the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River from shore to shore to

the Cape Fear Memorial Bridge, a length of approximately 26 miles. This portion of the safety zone will be enforced until the vessel transporting the crane has been safely moored at North Carolina State Port in Wilmington, North Carolina. The safety zone for the offload will include all navigable waters of the Cape Fear River within 200 yards of the transport vessel while it is moored. The duration of this zone is intended to protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during the transport and offload of the container crane. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the Captain of the Port North Carolina or a designated representative. There will be a pre-designated safety vessel ahead of the transport vessel to monitor the flow of traffic and inform mariners that the container crane transit is in progress. Vessels that are less than 40 feet in height and will not impede the transport vessel may request permission to pass through the safety zone or remain in place as the transport vessel passes. The Fort Fisher and Bald Head ferries will be able to operate on their normal schedule as long as the scheduled transit will not come within one mile of the transport vessel and they receive permission from the Captain of the Port North Carolina or a designated representative. The strict height restriction of 40 feet is required because portions of the transported crane extend over the water on both sides of the transport vessel.

V. Regulatory Analyses

We developed this 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 and 13563 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be allowed to enter or transit portions of the Cape Fear River for 2 non-consecutive days from April 1 through May 5, 2019. Vessel traffic will not be allowed to enter or transit a portion of the Cape Fear River for approximately five to seven hours during the transit of the transport vessel, and for up to five hours during the offload after the transit. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. This portion of the Cape Fear River has been determined to be a high traffic area. This rule allows vessels to request permission to pass through the moving safety zone or remain in place as long as they are under the height restriction of 40 feet.

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 received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will 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 zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will 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 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 rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined 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 rule involves a safety zone lasting five to seven hours on all navigable waters of the Cape Fear River from the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River from shore to shore to the Cape Fear Memorial Bridge, a length of approximately 26 miles, and a safety zone lasting up to five hours that would prohibit entry within 200 yards of a moored vessel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-1067 to read as follows:

**§ 165.T05-1067 Safety Zone; Cape Fear River, Brunswick County and New
Hanover County, NC.**

- (a) Location. The following areas are safety zones:

- (1) *Safety zone 1.* All navigable waters of the Cape Fear River from the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River from shore to shore to the Cape Fear Memorial Bridge, in Brunswick County and New Hanover County, NC;

- (2) *Safety zone 2.* Waters of the Cape Fear River within 200 yards around the vessel transporting the new Neo-Panamax container crane to the North Carolina State Port Authority in Wilmington, North Carolina, while the vessel is moored at the North Carolina State Port in Wilmington, North Carolina.

- (b) Definitions. As used in this section---

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Participants means persons and vessels involved in support of the container crane transport and offload.

(c) Regulations. (1) The general regulations governing safety zones in § 165.23 apply to the areas described in paragraph (a) of this section.

(2) With the exception of participants, entry into or remaining in these safety zones is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement periods. This regulation will be enforced for:

(1) *Zone 1 during vessel transit*. Vessel transit is anticipated to take one day and will occur from April 1 through April 30, 2019;

(2) *Zone 2 during offload of the Neo-Panamax container crane*. Offload will

take one day and will occur within five days after vessel transit is complete.

(f) Public notification. The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: March 28, 2019.

Bion B. Stewart,
Captain, U. S. Coast Guard
Captain of the Port North Carolina.
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