



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2020-0468]**

**RIN 1625-AA08**

**Special Local Regulation; Atlantic Intracoastal Waterway, Morehead City, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation (SLR) for certain navigable waters of the Atlantic Intracoastal Waterway (AICW) and Beaufort Inlet in Morehead City, North Carolina. This SLR is intended to restrict vessel traffic on the AICW and Beaufort Inlet during high-speed boat races. The restriction of vessel traffic movement in the SLR is intended to protect participants and spectators from the hazards posed by these events. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

**DATES:** This rule is effective from 9 a.m. to 5 p.m. on September 13, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0468 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, call or email Chief Petty Officer Joshua O’Rourke, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone 910–772–2227, email Joshua.P.Orourke@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a comment period for this rulemaking due to the short time period between event planners notifying the Coast Guard of the event and required publication of this rule. Immediate action is needed to protect persons and vessels from the hazards associated with this event. It is impracticable and contrary to the public

interest to publish an NPRM because a final rule needs to be in place by September 13, 2020, to minimize potential danger to the participants and the public during the event.

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 public interest because immediate action is needed to protect persons and vessels from the hazards associated with this event on September 13, 2020.

### **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 hazards associated with the Crystal Coast Grand Prix race scheduled for 9:00 a.m. through 5:00 p.m. on September 13, 2020, is a safety concern for mariners during a high speed boat race on portions of the Atlantic Intra Coastal Waterway (AICW) and Beaufort Inlet in Morehead City, North Carolina. This rule is necessary to protect safety of life from the potential hazards associated with the high-speed boat race.

### **IV. Discussion of the Rule**

This rule establishes an SLR on a portion of the AICW and Beaufort Inlet from 9 a.m. to 5 p.m. on September 13, 2020. The time of enforcement will be broadcast locally over VHF-FM marine radio. The SLR will include a race area on all navigable waters of the AICW and Beaufort Inlet, North Carolina, from approximate positions: latitude 34°42'52"N., longitude 076°43'16"W., then east to latitude 34°42'52.2"N., longitude 076°42'11.04"W., then east to latitude 34°42'53.76"N., longitude 076°41'38.04"W., then southeast to latitude 34°42'10.8"N., longitude 076°40'44.4"W., then south to latitude

34°42'4.3"N., longitude 076°40'48.1"W., then northwest to latitude 34°42'47.34"N., longitude 076°41'49"W., then west to latitude 34°42'50"N., longitude 076°43'16"W., then north to the point of origin. This rule also temporarily establishes a portion of the AICW to be used as a spectator zone. The spectator area will be marked with temporary buoys and will be at least 100 yards from the race course, south of Sugarloaf Island, North Carolina, from approximate positions: latitude 34°42'42"N., longitude 076°43'15"W., then east to latitude 34°42'41"N., longitude 076°42'14"W., then south to latitude 34°42'32"N., longitude 076°42'14"W., then west to latitude 34°42'32"N., longitude 076°43'15"W., then north to the point of origin. This rule also temporarily establishes a buffer area around the perimeter of the race area, from approximate positions: latitude 34°42'55"N., longitude 076°43'15"W., then east to latitude 34°42'56"N., longitude 076°42'13"W., then east to latitude 34°42'57"N., longitude 076°41'41"W., then east to latitude 34°42'57"N., longitude 076°41'25"W., then south east to latitude 34°42'23"N., longitude 076°40'44"W., then south to latitude 34°41'59"N., longitude 076°40'43"W., then north west to latitude 34°42'41"N., longitude 076°42'05"W., then west to latitude 34°42'42"N., longitude 076°43'15"W., then north to its point of origin.

The duration of this SLR is intended to protect participants and spectators on the navigable waters of the AICW and Beafort Inelt during the high-speed boat race. Vessels may request permission to pass through the SLR between race heats. No vessel or person will be permitted to enter the SLR without obtaining permission from the COTP North Carolina or a designated representative. The regulatory text appears at the end of this document.

## **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 SLR. Vessel traffic will not be allowed to enter or transit a portion of the AICW or Beaufort Inlet during an active race event from 9 a.m. through 5 p.m. on September 13, 2020. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the enforcement period of the SLR. This rule allows vessels to request permission to pass through the regulated area between race heats.

### *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 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 SLR 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.

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 call or email 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.

#### *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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 an SLR lasting only eight hours on September 13, 2020, to be enforced during active race events. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 100**

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

**PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS.**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T500-0468 to read as follows:

**§ 100.T500-0468 Crystal Coast Grand Prix, Morehead City, NC.**

(a) *Regulated areas.* The regulations in this section apply to the following areas:

(1) The Race Area is designated as all navigable waters of the AICW and

Beaufort Inlet, North Carolina, from approximate positions: latitude 34°42'52"N., longitude 076°43'16"W., then east to latitude 34°42'52.2"N., longitude 076°42'11.04"W., then east to latitude 34°42'53.76"N., longitude 076°41'38.04"W., then southeast to latitude 34°42'10.8"N., longitude 076°40'44.4"W., then south to latitude 34°42'4.3"N., longitude 076°40'48.1"W., then northwest to latitude 34°42'47.34"N., longitude 076°41'49"W., then west to latitude 34°42'50"N., longitude 076°43'16"W., then north to the point of origin.

(2) The Spectator Area is designated as all waters of the AICW, North Carolina, from approximate positions: latitude 34°42'42"N., longitude 076°43'15"W., then east to latitude 34°42'41"N., longitude 076°42'14"W., then south to latitude 34°42'32"N., longitude 076°42'14"W., then west to latitude 34°42'32"N., longitude 076°43'15"W., then north to the point of origin.

(3) The Buffer Area is designated as all waters of the AICW and Beaufort Inlet, North Carolina, from approximate positions: latitude 34°42'55"N., longitude 076°43'15"W., then east to latitude 34°42'56"N., longitude 076°42'13"W., then east to latitude 34°42'57"N., longitude 076°41'41"W., then east to latitude 34°42'57"N., longitude 076°41'25"W., then south east to latitude 34°42'23"N., longitude 076°40'44"W., then south to latitude 34°41'59"N., longitude 076°40'43"W., then north west to latitude 34°42'41"N., longitude 076°42'05"W., then west to latitude 34°42'42"N., longitude 076°43'15"W., then north to its point of origin.

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

*Buffer Area* is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer area is to minimize

potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

*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.

*Spectator Area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Regulations.*

(1) Everyone other than participants are prohibited from entering, transiting through, anchoring in, or getting underway within the regulated area described in paragraph (a)(1) of this section unless authorized by the COTP North Carolina or their designated representative

(2) Everyone other than participants, including those engaged in spectating, may be directed by a designated representative to the regulated area described in section (a) of this section, where they must remain during the effective period unless otherwise authorized or directed by a designated representative.

(3) To seek permission to enter, contact the COTP by calling the Sector North Carolina Command Center at 910-343-3882 or contact the COTP's designated representative on Marine band Radio, VHF-FM channel 16 (156.8 MHz). Those in the

regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(d) *Enforcement officials.* 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.* This SLR will be enforced from 9 a.m. through 5 p.m. on September 13, 2020.

Dated: August 20, 2020

Matthew J. Baer,  
Captain, U. S. Coast Guard,  
Captain of the Port North Carolina.

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