



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0052]

RIN 1625-AA00

Safety Zone; Hurricanes and Tropical Storms in Captain of the Port Zone North

Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone to be enforced in the event of hurricanes and tropical storms in the Sector North Carolina Captain of the Port (COTP) Zone. This action is necessary to ensure the safety of the waters of the Sector North Carolina COTP Zone. This proposed rulemaking would establish actions to be completed by industry and vessels in the COTP Zone prior to landfall of hurricanes and tropical storms threatening the State of North Carolina. We invite your comments on this proposed rulemaking.

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

ADDRESSES: You may submit comments identified by docket number USCG-2023-0052 using the Federal Decision-Making Portal at <https://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 about this proposed rulemaking, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910-772-2221, email nemarineevents@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

II. Background, Purpose, and Legal Basis

North Carolina has the potential to be affected by hurricanes and tropical storms on a yearly basis, especially between the months of June and November. The Sector North Carolina Captain of the Port (COTP) proposes establishing a safety zone to provide for the safety of life and for the protection of port infrastructure and of the environment during such storms. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP of Sector North Carolina is proposing to establish a safety zone to be enforced in case of hurricanes and tropical storms in North Carolina. This action is necessary to ensure the safety of the waters of the COTP North Carolina and it would establish actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes and tropical storms threatening the State of North Carolina. The proposed safety zone would consist of all navigable waters of the United States in the North Carolina COTP Zone, as defined in 33 CFR 3.25–20. Portions of the safety zone may be activated at different times, as conditions dictate. The proposed regulatory text 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 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. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the necessity to protect life and port infrastructure during hurricanes and tropical storms. The scope of the regulation is narrow and will only apply when a hurricane or tropical storm impacts the navigable waters of the Sector North Carolina Captain of the Port Zone. These events are infrequent and of short duration. Regulatory restrictions will be lifted as soon as practicable following the passage of a named storm.

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 zone 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 proposed 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 proposed 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. 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 call or email 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 potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 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 a safety zone that would prohibit entry in certain waters of the North Carolina COTP Zone for the duration needed to ensure safe transit of vessels and industry post-hurricane, post-storm, and post-emergency. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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.

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 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.

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.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0052 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage.

Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add §165.562 to read as follows:

§165.562 Safety Zone; Hurricanes and Tropical Storms in Captain of the Port Zone

North Carolina.

(a) *Regulated Areas.* All navigable waters of the United States within Sector North Carolina COTP Zone as described in 33 CFR 3.25–20, during specified port conditions. Port conditions and safety zone activation may vary for different regions of the regulated area at different times, based on storm conditions and

projected track.

(b) *Definitions.*

(1) *Captain of the Port* means the Commander, Coast Guard Sector North Carolina

(2) *Representative* means any Coast Guard commissioned, warrant, or petty officer or civilian employee who has been authorized to act on the behalf of the Captain of the Port.

(3) *Port Condition WHISKEY* means a condition set by the COTP when National Weather Service (NWS) weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the Port of Wilmington or Port of Morehead City within 72 hours.

(4) *Port Condition X-RAY* means a condition set by the COTP when NWS weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(5) *Port Condition YANKEE* means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/ 34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(6) *Port Condition ZULU* means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/ 34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(7) *Port Condition RECOVERY* means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/ 34–47 knots) from a tropical or hurricane force storm are no longer predicted for the designated area.

This port condition remains in effect until the regulated areas are deemed safe and reopened to normal operations.

(c) *Regulations. (1) Port Condition WHISKEY.* All vessels must exercise due diligence in preparation for potential storm impacts. Ports and waterfront facilities are encouraged to remove all debris and secure potential flying hazards. All self-propelled oceangoing vessels over 500 gross tons (GT), all oceangoing tank barges and their supporting tugs, and all tank barges over 200 GT wishing to remain in port should seek approval from the COTP prior to Port Condition X-Ray.

(2) *Port Condition X-RAY.* All vessels and port facilities are encouraged to ensure potential flying debris and hazardous materials are removed or secured. All self-propelled oceangoing vessels over 500 gross tons (GT), all oceangoing tank barges and their supporting tugs, and all tank barges over 200 GT without COTP approval to remain in port must depart prior to the setting of Port Condition Yankee. Vessels with COTP permission to remain in port must implement their approved mooring arrangement.

(3) *Port Condition YANKEE.* Affected ports are closed to all inbound vessel traffic. All self-propelled oceangoing vessels over 500 gross tons (GT), all oceangoing tank barges and their supporting tugs, and all tank barges over 200 GT must have departed designated ports within the Sector North Carolina COTP zone unless they have received COTP approval to remain in port.

(4) *Port Condition ZULU.* Affected ports and waterways are closed to all vessel traffic unless specifically authorized by the COTP or representative. Cargo operations are suspended, including bunkering and lightering. The COTP may grant cargo transfer waivers unless a Cargo of Particular Hazard or Certain Dangerous Cargo is involved.

(5) *Port Condition RECOVERY.* Designated areas are closed to all commercial traffic and recreational vessels 65-feet in length and greater. Based on assessments of channel conditions, navigability concerns, and hazards to navigation, the COTP may

permit vessel movements with restrictions. Restrictions may include, but are not limited to, preventing or delaying vessel movements, imposing draft, speed, size, horsepower or daylight restrictions, or directing the use of specific routes. Vessels permitted to transit the regulated area shall comply with the lawful orders or directions given by the COTP or designated representative.

(6) *Safety Zones Notice.* Coast Guard Sector North Carolina will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners, Marine Safety Information Broadcast, or by on-scene designated representatives.

(7) *Regulated Area Notice.* The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners, Marine Safety Information Broadcast, or by on-scene designated representatives.

(8) *Exception.* This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: June 29, 2023

Timothy J. List,
Captain, U.S. Coast Guard,
Captain of the Port, Sector North Carolina.

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